

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KIMBERLY BECK and TRAVIS LORENTZ,
INDIVIDUALLY and as PERSONAL
REPRESENTATIVES of CHARLES "GAGE"
LORENTZ, DECEASED,

Plaintiffs,

VS.

No. 2:20-cv-01280-MV-SMV

UNITED STATES OF AMERICA and
ROBERT JOHN MITCHELL, INDIVIDUALLY
and in his OFFICIAL CAPACITY as a
NATIONAL PARK RANGER,

Defendants.

VIDEOTAPED DEPOSITION OF RANGER ROBERT JOHN MITCHELL
March 29, 2022

9:09 a.m.

201 Third St. NW, Suite 900
Albuquerque, New Mexico 87102

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: Ms. Shannon L. Kennedy
ATTORNEY FOR PLAINTIFFS

REPORTED BY: Annette G. Aragon, NM CR #197
Paul Baca Professional Court Reporters
500 Fourth Street NW, Suite 105
Albuquerque, New Mexico 87102

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1 **Q. Have you ever been trained when using a**
 2 **Taser to control a resisting subject to avoid the chest**
 3 **area?**
 4 A. No. The chest is the optimal area.
 5 **Q. That's your training, that the chest is the**
 6 **optimal area?**
 7 A. Yes.
 8 **Q. Have you received any training about cardiac**
 9 **arrest arising from Taser probes going into the chest of**
 10 **a subject?**
 11 MS. LYMAN: Objection. Form and foundation.
 12 A. It's been discussed in training that that
 13 could occur.
 14 **Q. (BY MS. KENNEDY) So in spite of the fact**
 15 **it's been discussed in training that by shooting someone**
 16 **in the chest with a Taser that you have a cardiac arrest,**
 17 **you still do not consider that to be a no-strike zone?**
 18 MS. LYMAN: Objection. Form and foundation.
 19 A. No.
 20 **Q. (BY MS. KENNEDY) Why not?**
 21 A. Well, the chest is the optimal area.
 22 **Q. That's what you were trained, that the chest**
 23 **was the optimal area for --**
 24 A. It's the large --
 25 **Q. -- the probe?**

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1 A. It's typically the largest area on most
 2 people.
 3 **Q. My question was: Was it your training that**
 4 **shooting a probe into the chest of a subject that was**
 5 **unarmed was the optimum area for putting the probes on a**
 6 **subject?**
 7 A. Yes.
 8 MS. LYMAN: Objection. Form and foundation.
 9 **Q. (BY MS. KENNEDY) And did you receive that**
 10 **training months before March of 2020?**
 11 MS. LYMAN: Objection. Form.
 12 A. I believe that has come up in every training
 13 that I've attended.
 14 **Q. (BY MS. KENNEDY) When you pull the trigger**
 15 **on the Taser to make a probe -- or cartridge one, how**
 16 **many times do you pull the trigger?**
 17 A. You would pull it once to deploy the
 18 cartridge.
 19 **Q. Okay. And what happens if you pull it once**
 20 **and deploy the cartridge and it doesn't hit the subject**
 21 **or the subject doesn't respond to it?**
 22 A. Okay. Then you would normally deploy the
 23 second cartridge.
 24 **Q. Why would that be normally the next thing**
 25 **you do?**

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1 A. The Taser device carries two cartridges; if
 2 you've used one, then you would use the other.
 3 **Q. And would you use the other by pulling the**
 4 **trigger once again?**
 5 A. Yes.
 6 **Q. Is there any time you were trained to pull**
 7 **the trigger more than twice to deploy cartridge one and**
 8 **cartridge two?**
 9 MS. LYMAN: Objection. Foundation.
 10 A. No, not that I remember.
 11 **Q. (BY MS. KENNEDY) Okay. So did you act**
 12 **pursuant to your training when deploying a Taser to pull**
 13 **the trigger once to deploy cartridge one and once to**
 14 **deploy cartridge two?**
 15 MS. LYMAN: Objection. Form. Foundation.
 16 A. Yes.
 17 **Q. (BY MS. KENNEDY) Were you also trained**
 18 **to -- in the tactic of drive stun?**
 19 A. Yes.
 20 **Q. And how do you deploy a Taser in drive-stun**
 21 **mode?**
 22 A. So once both cartridges have been deployed,
 23 you can use the Taser in drive-stun by making contact
 24 with the suspect's skin.
 25 **Q. And what's -- when you say "make contact,"**

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1 **you make contact with the end of the Taser onto the**
 2 **suspect's skin. Correct?**
 3 A. Yes.
 4 **Q. And once you do that, how many times do you**
 5 **pull the trigger?**
 6 MS. LYMAN: Objection. Foundation.
 7 **Q. (BY MS. KENNEDY) In your experience and**
 8 **training,**
 9 A. Okay. You would do it once and then
 10 reassess.
 11 **Q. And you pull the trigger once and reassess.**
 12 A. Yes.
 13 **Q. You are aware when you pull a cartridge that**
 14 **the Taser cycles for five seconds?**
 15 A. Yes.
 16 **Q. Once you pull the first cartridge, have you**
 17 **been trained to reassess?**
 18 MS. LYMAN: Objection. Foundation.
 19 A. Yes.
 20 **Q. (BY MS. KENNEDY) And then you pull the**
 21 **second cartridge. It cycles for another five seconds.**
 22 **Correct?**
 23 A. Yes.
 24 **Q. And then you're trained after you do that,**
 25 **you reassess?**

37 (Pages 142 to 145)

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1 asking me?

2 **Q. (BY MS. KENNEDY) Did you understand that a**

3 **Taser is effective for a limited period of time?**

4 A. Yes.

5 **Q. And yet you thought -- decided to take the**

6 **fight to Gage to subdue him with a Taser that you knew**

7 **was effective only for a limited period of time.**

8 A. Yes.

9 **Q. You shot the Taser once. Correct?**

10 A. Yes.

11 **Q. And it did not subdue him?**

12 A. Correct.

13 **Q. And then you decided to close distance on**

14 **Gage to subdue him with the Taser.**

15 MS. LYMAN: Objection. Form and foundation.

16 **Q. (BY MS. KENNEDY) Is that correct?**

17 A. I believe I deployed the second cartridge.

18 **Q. So your testimony here today under oath is**

19 **you now believe you deployed the second cartridge before**

20 **you closed distance on Gage?**

21 A. That's what I think.

22 **Q. Why do you think that now?**

23 A. I think that I thought that all along.

24 **Q. Why do you think -- why do you think that's**

25 **what happened?**

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1 A. To the best of my knowledge, I deployed both

2 cartridges. I can't remember everything.

3 **Q. So the best of your knowledge, you deployed**

4 **both cartridges before closing distance on Gage?**

5 A. Yes.

6 **Q. So after both cartridges failed to subdue**

7 **Gage, you thought you could close distance on Gage and**

8 **subdue him with the Taser?**

9 MS. LYMAN: Objection. Form and foundation.

10 A. Yes.

11 **Q. (BY MS. KENNEDY) And why did you think you**

12 **could subdue Gage with the Taser in your hand by closing**

13 **distance on him?**

14 A. That's consistent with the training.

15 **Q. How is that consistent with the training?**

16 A. The use of the drive-stun.

17 **Q. So you thought you could close distance on**

18 **Gage Lorentz and use this Taser in drive-stun mode to**

19 **subdue him?**

20 A. Yes.

21 **Q. Why?**

22 A. That's consistent with the training on using

23 the Taser.

24 **Q. How is that consistent on the training on**

25 **using the Taser?**

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1 A. That's what we're taught. You can deploy

2 the cartridge. You can deploy the second cartridge. And

3 if you have a dart in the suspect, you may attempt to

4 drive stun.

5 **Q. So when you closed distance on Gage to**

6 **attempt to drive stun him, you thought you had a dart in**

7 **him?**

8 A. Yes.

9 **Q. Why did you think that?**

10 A. I could see it in his chest.

11 **Q. You could also see that he was not becoming**

12 **incapacitated. Correct?**

13 A. Yes.

14 **Q. You could see the dart in his chest or you**

15 **could see the dart in his jacket?**

16 A. It was in his jacket.

17 **Q. So you could not see whether the dart had**

18 **actually gotten into his skin?**

19 A. Correct.

20 **Q. And in fact, given his physical reaction, it**

21 **appeared that the dart had not gotten into his skin.**

22 MS. LYMAN: Objection. Form and foundation.

23 **Q. (BY MS. KENNEDY) Correct?**

24 A. No. It -- there's no way for me to tell

25 that.

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1 **Q. Well, you could tell that it wasn't**

2 **incapacitating him. Correct?**

3 A. I could tell that it wasn't incapacitating

4 him. That's correct.

5 **Q. And so you're saying: I don't know how many**

6 **prongs were or were not in him. All I could was there**

7 **was a prong in his jacket before I closed distance. Is**

8 **that what you're testifying to?**

9 A. Yes.

10 **Q. Would it be objectively reasonable to take**

11 **the fight to another person when you know you're going to**

12 **lose the fight?**

13 MS. LYMAN: Objection. Form and foundation.

14 A. Could you please repeat that.

15 **Q. (BY MS. KENNEDY) Would it be objectively**

16 **unreasonable to take the fight to another person when you**

17 **know you're going to lose the fight?**

18 A. Yes.

19 **Q. Would you agree with me that it is**

20 **objectively unreasonable to take the fight to another**

21 **person unless you reasonably believe that you are capable**

22 **of subduing the other person without resort to deadly**

23 **force?**

24 MS. LYMAN: Objection. Form and foundation.

25 A. I believe that, yes, that you could subdue

44 (Pages 170 to 173)

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1 walkthrough?

2 A. I didn't know that we were doing a

3 walkthrough and I don't know who suggested it.

4 **Q. Did you have any concerns about giving a**

5 **statement to law enforcement agencies after having taken**

6 **a human life?**

7 MS. LYMAN: Objection. Form and foundation.

8 A. No.

9 **Q. (BY MS. KENNEDY) And why not?**

10 A. I believe that it's consistent with my

11 training, that you would be expected to give a statement

12 following an officer-involved shooting.

13 **Q. So -- so you thought you were giving a**

14 **statement involving an officer-involved shooting to**

15 **fellow law enforcement officers who were investigating**

16 **whether the shooting was justified?**

17 MS. LYMAN: Objection. Form and foundation.

18 A. Yes.

19 **Q. (BY MS. KENNEDY) You didn't think that you**

20 **were potentially facing criminal charges?**

21 A. No, I don't think I was thinking that.

22 **Q. Why weren't you concerned that you could be**

23 **potentially facing criminal charges after having taken a**

24 **human life?**

25 MS. LYMAN: Objection. Form.

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1 A. I knew that that was a possibility, but

2 nobody had ever told me that I was going to be charged

3 with anything.

4 **Q. (BY MS. KENNEDY) Okay. So you knew it was**

5 **a possibility that you could be charged for taking Gage**

6 **Lorentz's human life, but was it kind of, like, highly**

7 **unlikely in your mind?**

8 MS. LYMAN: Objection. Form.

9 A. I had believed that I had acted

10 appropriately as an officer.

11 **Q. (BY MS. KENNEDY) So because it was your**

12 **belief -- it was your belief that you had acted**

13 **appropriately as an officer based on your training by the**

14 **National Park Service?**

15 A. Yes.

16 **Q. What other informed your belief that you had**

17 **acted appropriately as an officer?**

18 A. I don't think there was anything else.

19 **Q. So it was solely based on your training with**

20 **the National Park Service, training such as bring the**

21 **fight to them, that you thought you could acted**

22 **appropriately as an officer?**

23 MS. LYMAN: Objection. Form and foundation.

24 A. I'm not sure that I understand that

25 question.

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1 **Q. (BY MS. KENNEDY) Based on your training at**

2 **the time of this walkthrough, you had no understanding or**

3 **awareness that you had done anything wrong?**

4 MS. LYMAN: Objection. Form.

5 A. It was my understanding that we'd had a

6 shooting and it needed to be investigated. I was willing

7 and prepared to tell them what they were going to ask.

8 **Q. (BY MS. KENNEDY) And you were willing and**

9 **prepared to tell them what they were going to ask because**

10 **it was your understanding you were involved in the**

11 **investigation of an officer-involved shooting.**

12 A. Yes.

13 **Q. And based on your training and experience,**

14 **you thought you had done nothing wrong.**

15 MS. LYMAN: Objection. Form.

16 A. Correct.

17 **Q. (BY MS. KENNEDY) I'm going to continue to**

18 **play Plaintiffs' Exhibit B.**

19 **(Video played.)**

20 **Q. (BY MS. KENNEDY) Okay. Is that you**

21 **pointing out a tire track that you believed was a tire**

22 **track of Gage Lorentz's vehicle? And that is at time 3**

23 **minutes and 13 seconds in Plaintiffs' Exhibit B.**

24 MS. LYMAN: Objection. Foundation.

25 A. Yes.

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1 **Q. (BY MS. KENNEDY) Why did you believe that**

2 **was a tire mark left by the driving of Gage Lorentz?**

3 A. I think that it led up to where the sign

4 post had been.

5 **Q. Did you see Gage Lorentz hit the sign post?**

6 A. Yes.

7 **Q. After you saw Gage Lorentz hit the sign**

8 **post, why didn't you call for backup?**

9 MS. LYMAN: Objection. Form.

10 A. I saw him continuing to speed down towards

11 where I knew the boys were at the -- at the reservoir

12 there at Rattlesnake Springs.

13 **Q. (BY MS. KENNEDY) So rather than call for --**

14 **you couldn't call for backup and follow him at the same**

15 **time?**

16 MS. LYMAN: Objection. Form.

17 A. I might have been able to, but I didn't -- I

18 didn't have a good description of the vehicle.

19 **Q. (BY MS. KENNEDY) Okay. So you might have**

20 **been able to call for backup and let them know that you**

21 **just saw someone in a white pickup truck hit a sign,**

22 **though. Correct?**

23 MS. LYMAN: Objection. Form and foundation.

24 A. I could have called, yes.

25 **Q. (BY MS. KENNEDY) And after watching Gage**

50 (Pages 194 to 197)

<p style="text-align: right;">Page 198</p> <p>1 Lorentz drive where he was driving -- where this shows he</p> <p>2 was driving -- and then hit a sign, why didn't you call</p> <p>3 for backup at that time?</p> <p>4 MS. LYMAN: Objection. Form.</p> <p>5 A. It just didn't occur to me.</p> <p>6 Q. (BY MS. KENNEDY) Had you ever experienced</p> <p>7 anything like this where you had seen -- where you see a</p> <p>8 driver driving down a dirt road and hitting a sign?</p> <p>9 A. Yes.</p> <p>10 Q. Pursuant to your training, had you been</p> <p>11 trained that it would have been objectively reasonable at</p> <p>12 that point to call for backup?</p> <p>13 MS. LYMAN: Objection. Form and foundation.</p> <p>14 A. I could have called for backup.</p> <p>15 Q. (BY MS. KENNEDY) And, in fact, it would</p> <p>16 have been objectively reasonable for you to call -- call</p> <p>17 for backup after observing Gage Lorentz's driving.</p> <p>18 MS. LYMAN: Objection. Form and foundation.</p> <p>19 Q. (BY MS. KENNEDY) Don't you agree?</p> <p>20 A. Yeah, I could have.</p> <p>21 Q. And it would have been objectively</p> <p>22 reasonable to do so, don't you agree?</p> <p>23 MS. LYMAN: Objection. Form and foundation.</p> <p>24 A. Some officers might have called for backup,</p> <p>25 which would make it objectively reasonable.</p>	<p style="text-align: right;">Page 200</p> <p>1 whether it's an assault, some other criminal act, a</p> <p>2 traffic accident -- often don't remember all the details</p> <p>3 of the incident. That would have been covered in my law</p> <p>4 enforcement academies.</p> <p>5 Q. (BY MS. KENNEDY) And do you recover</p> <p>6 memories of the incident at a later date?</p> <p>7 MS. LYMAN: Objection. Foundation.</p> <p>8 A. I think that it's possible that somebody</p> <p>9 will never remember, and it's possible that people will</p> <p>10 have things come to their mind weeks or months or days</p> <p>11 later.</p> <p>12 Q. (BY MS. KENNEDY) When Jared -- when Jared</p> <p>13 Rostro told you that there were inconsistencies between</p> <p>14 what you had said to him and the facts, did you think</p> <p>15 that, "Oh, yes. I now know that I gave incorrect</p> <p>16 information during the walkthrough of the shooting of</p> <p>17 Gage Lorentz"?</p> <p>18 MS. LYMAN: Objection. Form and foundation.</p> <p>19 A. No, I didn't think that.</p> <p>20 Q. (BY MS. KENNEDY) Okay. Do you think that</p> <p>21 sitting here today?</p> <p>22 A. No.</p> <p>23 Q. I'm going to continue with the playing of</p> <p>24 Plaintiffs' Exhibit B.</p> <p>25 (Video played.)</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. (BY MS. KENNEDY) So after you viewed Gage</p> <p>2 Lorentz hit the sign, it would have been objectively</p> <p>3 reasonable to call for backup. You agree?</p> <p>4 MS. LYMAN: Objection. Form and foundation.</p> <p>5 A. I could have, yes.</p> <p>6 Q. (BY MS. KENNEDY) I'm not asking whether you</p> <p>7 could have. You've answered that question. I'm asking</p> <p>8 you whether, in your experience as a law enforcement</p> <p>9 officer, it would be objectively reasonable for an</p> <p>10 officer to call for backup after seeing Gage Lorentz's</p> <p>11 driving.</p> <p>12 A. Yes.</p> <p>13 Q. When you were testifying earlier about Jared</p> <p>14 Rostro -- Jared Rostro calling you, you said after the</p> <p>15 phone call you reviewed some -- some things in writing.</p> <p>16 What did you review?</p> <p>17 A. I didn't review anything. I don't recall</p> <p>18 reviewing anything. I didn't have anything that I could</p> <p>19 look at. There was still an open investigation.</p> <p>20 Q. So what -- what did you think when he said,</p> <p>21 "There's some inconsistencies between what you told me</p> <p>22 and the evidence"? What -- what came to mind?</p> <p>23 MS. LYMAN: Objection. Form.</p> <p>24 A. Consistent with my training, we know that</p> <p>25 people who have been traumatized in any capacity --</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. (BY MS. KENNEDY) I'm going to stop you</p> <p>2 there at Plaintiffs' Exhibit B, four minutes and</p> <p>3 four seconds. You say you didn't turn on your lights.</p> <p>4 Is that true?</p> <p>5 MS. LYMAN: Objection. Foundation.</p> <p>6 Q. (BY MS. KENNEDY) What's that?</p> <p>7 A. I did turn on my lights.</p> <p>8 Q. Okay. So at what point did you turn on your</p> <p>9 lights?</p> <p>10 A. As I was turning around to go after the</p> <p>11 vehicle.</p> <p>12 Q. Okay. So -- so what you did say to the</p> <p>13 officers during the walkthrough is that as you began to</p> <p>14 turn around, you turned on your lights to -- is that</p> <p>15 correct?</p> <p>16 A. I think that's correct.</p> <p>17 Q. Okay. I'm going to go back a little bit.</p> <p>18 (Video played.)</p> <p>19 Q. (BY MS. KENNEDY) When you say, "I didn't</p> <p>20 sound the siren, that I recall," what are you talking</p> <p>21 about?</p> <p>22 A. Okay. You can activate the lights without</p> <p>23 activating the siren.</p> <p>24 Q. Why didn't you activate the siren?</p> <p>25 A. He saw me, drove right around me. And I</p>

51 (Pages 198 to 201)

Page 206

1 you have one?

2 MS. LYMAN: Objection. Form.

3 A. No. I think that it has the potential to be

4 a useful tool.

5 Q. (BY MS. KENNEDY) Okay. So you would prefer

6 to have a dash camera rather than not have a dash camera.

7 A. Yes.

8 Q. Did you ever ask for someone at the Carlsbad

9 National Cavern to fix your dash camera so that would

10 have an ability to document what you were doing while

11 working?

12 MS. LYMAN: Objection. Form.

13 A. No.

14 Q. (BY MS. KENNEDY) Did there come a time

15 where you learned that your body-worn camera had not

16 functioned properly during your encounter with

17 Mr. Lorentz?

18 A. The first time I became aware of that was in

19 the interview with Detective Rostro.

20 Q. When did Detective Rostro tell you that the

21 body-worn camera had malfunctioned during your contact

22 with Gage?

23 A. He asked me did I ever turn it off during

24 the contact. And I remember telling him no.

25 Q. Did Detective Rostro ever have a

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1 conversation with you that was not recorded, to your

2 knowledge?

3 A. Only that phone call after the district

4 attorney closed out the case.

5 Q. When did Detective Rostro tell you that he

6 had watched the body-worn camera?

7 MS. LYMAN: Objection. Foundation.

8 A. I don't know.

9 Q. (BY MS. KENNEDY) But he did tell you that

10 he watched the body-worn camera before you gave a

11 recorded statement.

12 A. I believe it's someplace in the interview.

13 Q. Okay. So you believe that during your first

14 interview, before the walkthrough, Detective Rostro told

15 you that the body-worn camera had not functioned

16 properly.

17 A. He had asked me a question about whether or

18 not I had ever turned it off. I don't know if he

19 specifically said that it didn't record or that it

20 malfunctioned. I don't -- I don't recall what he said.

21 Q. So you recall that he asked you whether you

22 had turned the camera off?

23 A. Yes.

24 Q. And what was your answer to that question?

25 A. No.

Page 208

1 Q. So did you know how to turn the camera off?

2 A. Yes. You have to press the button and hold

3 it for -- I think it's 30 seconds.

4 Q. So, based on your training, you believe that

5 you can turn the camera off by holding down the button

6 for 30 seconds.

7 A. It's not 30 seconds. I don't remember what

8 the amount of time was on that particular model. Thirty

9 seconds is the buffering time when it comes on. You have

10 to hold it down and it makes a beep.

11 Q. To turn it off?

12 A. Yes.

13 Q. And pursuant to your training that is how,

14 on March 21st of 2020, you would have turned your camera

15 off, by holding down the button that was near your chest?

16 A. Yes.

17 Q. And you demonstrated how you would have done

18 that?

19 A. Yes.

20 Q. Could you demonstrate that again, please.

21 A. Okay. So the camera's worn right here over

22 the sternum and there's a -- there's a circular button.

23 It's fairly big. You can use -- you know, you can turn

24 it on and off using the gloves when you're wearing

25 gloves.

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1 And you have to hold it down. And by

2 pushing in on it, then it will shut itself off, and there

3 will be an audio signal that it has shut off.

4 Q. And what is the aud- -- aud- -- aud- -- what

5 is the signal it has shut off? What does it sound like?

6 A. I would describe it as a beep.

7 Q. Like, a high pitched, like, "beep"?

8 A. Yes.

9 Q. Okay. Did you hear that sound while you

10 were wrestling with Gage Lorentz?

11 A. No.

12 Q. Did you hear that sound at any time during

13 the time that you were present with Gage Lorentz?

14 MS. LYMAN: Objection. Form.

15 A. It makes the same audio signal when you turn

16 on. So when I turned on the camera, it would have made

17 the same sound.

18 Q. (BY MS. KENNEDY) Okay. Other than -- when

19 did you turn on the camera?

20 A. After I exited the vehicle.

21 Q. After you'd exited your own vehicle, as you

22 were exiting, you turned on the camera?

23 A. Yeah, I think so.

24 Q. Okay. I'm going to continue playing

25 Plaintiffs' Exhibit B.

53 (Pages 206 to 209)

Page 210

1 (Video played.)

2 Q. (BY MS. KENNEDY) Okay. At 4:45 somebody in

3 a yellow shirt is holding up something. Do you know what

4 that is?

5 A. That's the cross-piece for the sign.

6 Q. And do you have any -- had you deduced

7 any -- had you seen that before? Do you know how that

8 got there? What did you think when you saw that held up?

9 A. That it had been thrown there from when the

10 driver struck the sign.

11 Q. Did you see that happen?

12 A. I did not notice it go through the air.

13 (Video played.)

14 Q. (BY MS. KENNEDY) Okay. That was the

15 complete response we got from the Eddy County Sheriff's

16 Department of your first -- your walkthrough on that day.

17 On that day, how was your memory of the events on the day

18 you did the walkthrough?

19 MS. LYMAN: Objection. Form and foundation.

20 A. I remember that there was a little bit of

21 confusion on where the vehicles were parked.

22 Q. (BY MS. KENNEDY) So on the day of the

23 walkthrough, during this walkthrough that you just saw,

24 do you stand by everything you said during this

25 walkthrough?

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1 A. From what I just saw, yes. That was the

2 best of my memory.

3 Q. And just clear for the record, you stand by

4 everything you said in Plaintiffs' Exhibit B during the

5 walkthrough of -- before you end up later on down the

6 road. Right? This was just at the entrance of the gate

7 of Rattlesnake Springs. Correct?

8 A. Right. Where I first encountered the

9 incoming vehicle.

10 Q. And so in Plaintiffs' Exhibit B, you stand

11 by everything you described in the walkthrough?

12 MS. LYMAN: Objection. Form.

13 A. That's everything I could remember; so, yes.

14 Q. (BY MS. KENNEDY) Okay. How would you

15 change anything that you felt you got wrong in

16 Plaintiffs' Exhibit B --

17 MS. LYMAN: Objection.

18 Q. (BY MS. KENNEDY) -- during the walkthrough?

19 A. I don't know that there's anything to

20 change.

21 Q. Okay. So you wouldn't change anything in

22 Plaintiffs' Exhibit B in terms of what you said or

23 described.

24 A. Nothing that I could think of, no.

25 Q. When you first saw Gage Lorentz and deduced

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1 that he had hit the sign, did you call out your location

2 to anyone at that time?

3 A. No.

4 Q. When was the first time you called out your

5 location in relation to your incident with Gage Lorentz?

6 A. After the shooting.

7 Q. I'm going to play for you now what has been

8 marked as Plaintiffs' Exhibit D, which is the walkthrough

9 of the scene of the shooting.

10 Did you go to the walkthrough at the scene

11 of the shooting immediately after the walkthrough of the

12 location where Gage Lorentz allegedly hit the sign?

13 A. I thought that we did --

14 MS. LYMAN: Objection. Form.

15 Go ahead.

16 A. I thought that we went to the shooting scene

17 and then went back to where the -- I had encountered him.

18 That's what it seems to me.

19 Q. (BY MS. KENNEDY) Okay. That could be the

20 case. I have no idea. I was just given both videos. I

21 don't know which thing happened first.

22 A. Okay.

23 Q. So it's your memory here today that you

24 first went to the scene of the shooting; and then, after

25 discussing the scene of the shooting, you then went back

Page 213

1 to the scene where you had alleged that Gage had hit the

2 sign in the entrance to Rattlesnake Springs?

3 A. I think that is correct.

4 Q. Okay. When you saw Gage driving from where

5 he had hit the sign down towards the location of the

6 shooting, how fast did you think he was going?

7 A. I would have said 45 miles an hour.

8 Q. And what is the speed limit on that road?

9 A. Fifteen miles an hour.

10 Q. And as you were driving towards him and he

11 was driving towards the sign, were you afraid he was

12 going to hit you with -- with his vehicle?

13 A. Yes. I thought he could.

14 Q. Okay. You thought he could or you thought

15 he would?

16 A. Yeah. I wasn't too sure.

17 Q. I mean, often when I'm driving, I look at

18 someone and I'm, like, "That person can hit me. They

19 could hit me," but I don't think they're really going to,

20 but -- you know.

21 A. The speed was what concerned me because, of

22 course, it's gravel, which changes your -- your stopping

23 distance.

24 Q. So you were concerned that he was speeding

25 down the gravel road?

54 (Pages 210 to 213)

Page 214

1 A. (Nods head.)
 2 **Q. And the posted speed limit there is, what?**
 3 A. Fifteen.
 4 **Q. Okay. So he was going three times the legal**
 5 **speed limit down a gravel road in a large truck.**
 6 **Correct?**
 7 A. Yes.
 8 **Q. And based on your training and experience,**
 9 **would you call this careless driving or reckless driving?**
 10 MS. LYMAN: Objection. Form and foundation.
 11 A. I would say that -- that I would
 12 characterize it under the 36 CFR 4.22, unsafe operations.
 13 So...
 14 **Q. (BY MS. KENNEDY) Is that a petty**
 15 **misdemeanor?**
 16 MS. LYMAN: Objection. Form and foundation.
 17 A. That would be a misdemeanor.
 18 **Q. (BY MS. KENNEDY) Okay. Is it a traffic**
 19 **offense?**
 20 A. Yes.
 21 **Q. Can you write a ticket for that?**
 22 A. Yes.
 23 **Q. Okay. So there's no need to arrest**
 24 **Mr. Lorentz and put him in handcuffs and take him**
 25 **anywhere in order to do justice.**

Page 215

1 MS. LYMAN: Objection. Form and foundation.
 2 A. I would have the authority to arrest him.
 3 **Q. (BY MS. KENNEDY) That's not my question.**
 4 A. Oh.
 5 **Q. You had the authority and discretion to**
 6 **write him a ticket and let him go on his way. Correct?**
 7 A. Yes. I could have done that.
 8 **Q. Right. When you turn around and start**
 9 **following him, at that point do you intend to charge him**
 10 **with assault on an officer?**
 11 MS. LYMAN: Objection. Form and foundation.
 12 A. No.
 13 **Q. (BY MS. KENNEDY) Okay. So when he was**
 14 **driving towards you and you had to move over in the road**
 15 **to allow him to go by, you just moved your vehicle over**
 16 **and it was easy -- it was easy for you to get out of the**
 17 **way. Correct?**
 18 MS. LYMAN: Objection. Form and foundation.
 19 A. Okay. I don't remember the specifics. But
 20 what I said there is I stopped the vehicle and let him go
 21 around me.
 22 **Q. (BY MS. KENNEDY) Okay.**
 23 A. I don't think I even pulled over.
 24 **Q. Okay. So when you stopped the vehicle, Gage**
 25 **Lorentz went around you, and at no point did you feel**

Page 216

1 like he was going to hit you as he was driving around
 2 you.
 3 MS. LYMAN: Objection. Form and foundation.
 4 A. No. I did think that the potential for him
 5 hitting me was very real.
 6 **Q. (BY MS. KENNEDY) Okay. So what you did you**
 7 **do? You just sat there and let him drive around you?**
 8 A. I -- I believe that what I did is I stopped,
 9 because then you have at least a vehicle that's become a
 10 stationary object rather than a moving object, and
 11 probably put my foot on the brake and let him go around
 12 me.
 13 **Q. Okay. And he was -- he easily drove around**
 14 **you?**
 15 MS. LYMAN: Objection. Form and foundation.
 16 A. Well, he drove around me, yes.
 17 **Q. (BY MS. KENNEDY) Did you see his face when**
 18 **he was driving around you?**
 19 A. I didn't get a good look at him. There were
 20 tinted windows.
 21 **Q. So you didn't know his expression as he was**
 22 **driving around you?**
 23 A. No.
 24 **Q. He made no gestures towards you as he drove**
 25 **around you?**

Page 217

1 MS. LYMAN: Objection. Form and foundation.
 2 A. Not that I recall.
 3 **Q. (BY MS. KENNEDY) Did you have any**
 4 **indication as he drove around you that he even saw you?**
 5 MS. LYMAN: Objection. Form and foundation.
 6 A. Yeah, I think he saw me.
 7 **Q. (BY MS. KENNEDY) Why do you think he saw**
 8 **you?**
 9 A. Okay. It's the way he drove at me and then
 10 swerved away.
 11 **Q. What about the way he drove at you and**
 12 **swerved away made you think that he saw you?**
 13 A. I was just thinking about how close he got
 14 and then -- and then suddenly veered away.
 15 **Q. So you thought he had good enough control of**
 16 **his vehicle that he decided to get close to you and**
 17 **swerve away in a way that was intentional?**
 18 MS. LYMAN: Objection. Form and foundation.
 19 A. I think so.
 20 **Q. (BY MS. KENNEDY) When you turned your**
 21 **car -- and why do you think so?**
 22 A. Just the driving behavior; he came in, he
 23 came in fast, came in a big cloud of dust. And he seemed
 24 to come at me and then veer away from me at the last
 25 moment to avoid a collision as if he was just trying to

55 (Pages 214 to 217)

Page 218

1 do something to get my attention.

2 Q. So you thought that he intentionally swerved
3 away from you in a manner to get your attention.

4 A. Perhaps.

5 Q. Okay. So at that point did you call for
6 backup?

7 A. No.

8 Q. Why not? You just alleged that a driver had
9 nearly -- had threatened you by driving into you at
10 45 miles an hour in a 15-mile-an-hour road and swerved
11 away to avoid you at the last minute in a manner that
12 made you think he did so intentionally, which would
13 perhaps be battery on an officer. Why didn't you call
14 for backup at that time?

15 MS. LYMAN: Objection. Form and foundation.

16 A. At that time all I wanted to do was catch up
17 to the driver and talk to him. And I didn't see a reason
18 to call for backup.

19 Q. (BY MS. KENNEDY) So pursuant to your
20 training, nothing in your training told you: Huh, this
21 is very strange behavior. Maybe it would benefit to have
22 someone else with me to help me talk to this person
23 that's engaging in this bizarre behavior.

24 MS. LYMAN: Objection. Form and foundation.

25 Q. (BY MS. KENNEDY) Didn't occur to you.

Page 220

1 Q. So the reason you failed to call for
2 assistance once Gage was stopped and you were stopped was
3 because you wanted to talk to him?

4 A. Yes.

5 Q. And at that point you didn't feel that you
6 had a need for backup.

7 A. Correct.

8 Q. At that point did you feel that his driving
9 was without due care?

10 MS. LYMAN: Objection. Form and foundation.

11 A. Yes.

12 Q. (BY MS. KENNEDY) At that point did you feel
13 like his driving indicated to you that he may be under
14 the influence of an intoxicant?

15 MS. LYMAN: Objection. Form and foundation.

16 A. No.

17 Q. (BY MS. KENNEDY) Have you had any training
18 to investigate driving under the influence?

19 A. Yes.

20 Q. And when were you last trained to
21 investigate driving under the influence?

22 A. I had the initial training at the Federal
23 Law Enforcement Training Center and I'd had a refresher
24 in 2019.

25 Q. Were you trained to ask someone whether

Page 219

1 A. No.

2 Q. When you turned your car around after Gage
3 drove in such a threatening manner towards you, were you
4 angry at that point?

5 MS. LYMAN: Objection. Form and foundation.

6 A. No.

7 Q. (BY MS. KENNEDY) You weren't -- you weren't
8 angry?

9 A. No.

10 Q. How did you feel?

11 A. My real -- my real sense of urgency was that
12 I wanted to get down to where he was headed before he
13 could encounter the boys I had seen walking around the
14 reservoir.

15 Q. Had you talked to the boys that had been
16 walking around the reservoir prior to the shooting?

17 A. No.

18 Q. Prior to the shooting, had you made a
19 traffic stop earlier in that day?

20 A. Not -- no, not that I remember.

21 Q. When you stopped your vehicle and Gage had
22 stopped his vehicle, why did you fail to call for
23 assistance at that point?

24 A. All I wanted to do was talk to the driver.
25 I didn't feel a need to call for backup.

Page 221

1 they've had anything to drink?

2 MS. LYMAN: Objection. Form and foundation.

3 A. That would be something that you could do
4 during the investigation phase of a traffic stop.

5 Q. (BY MS. KENNEDY) So you were trained that
6 it would be common, if you were investigating someone
7 under the influence of an intoxicant, to ask them whether
8 they'd had any alcohol to drink?

9 MS. LYMAN: Objection. Form and foundation.

10 A. That would be -- that would be something
11 that you could ask after you've -- you've made contact
12 with the driver, yes.

13 Q. (BY MS. KENNEDY) And have you been trained
14 to investigate whether someone is under the influence of
15 drugs?

16 A. Yes.

17 Q. And have you been trained to ask them, "Have
18 you had any marijuana? Are you under the influence of
19 any drugs?"

20 MS. LYMAN: Objection. Form.

21 A. That would be something that you could ask
22 in the investigation process, yes.

23 Q. (BY MS. KENNEDY) Did you ever smell any
24 marijuana on Gage Lorentz?

25 A. No.

56 (Pages 218 to 221)

Page 230

1 make you feel?

2 A. I'm not sure that I understand the question.
3 I'm not sure that I felt anything different than what
4 I've been feeling all along.

5 Q. Okay. So watching the body-worn camera
6 footage of Gage Lorentz dying didn't change the way that
7 you had felt all along?

8 MS. LYMAN: Objection. Form.

9 A. Yes.

10 Q. (BY MS. KENNEDY) I had stopped the video at
11 3 minutes and 34 seconds. I'm going to start it again.

12 (Video played.)

13 Q. (BY MS. KENNEDY) Okay. I'm going to stop
14 you there.

15 When you were testifying about deploying the
16 Taser and then walking up to him to do the drive-stun,
17 prior to walking up to him to do the drive-stun, why
18 didn't you call for backup?

19 MS. LYMAN: Objection. Form and foundation.

20 A. The only thing I would have had at my
21 disposal was the handheld radio which does not work from
22 that location.

23 Q. (BY MS. KENNEDY) You couldn't walk back to
24 your vehicle?

25 A. I wasn't going to turn my back on him.

Page 231

1 Q. Well, you could walk backwards, couldn't
2 you?

3 MS. LYMAN: Objection --

4 Q. (BY MS. KENNEDY) Couldn't you say, "Stay
5 there. I'm going to go call for backup?"

6 MS. LYMAN: Objection. Foundation and form.

7 Q. (BY MS. KENNEDY) You weren't able to
8 communicate to Gage to stay put?

9 A. No. I wasn't going to disengage from him.

10 Q. Well, you're not disengaging if you're
11 talking to him while you're walking backwards to call for
12 backup.

13 MS. LYMAN: Objection. Form and foundation.

14 Q. (BY MS. KENNEDY) Are you? Pursuant to your
15 training, can you walk backwards while talking to someone
16 and then call backup --

17 A. I don't believe I've ever been trained to
18 walk backwards.

19 Q. Okay. So you've never been trained to
20 continue to talk to someone while making distance between
21 you and the subject so that you can call for backup.

22 A. I'm capable of doing that, yes.

23 Q. Okay. How -- how are you capable of doing
24 that?

25 MS. LYMAN: Objection. Form.

Page 232

1 A. Okay. I could have walked away from him and
2 gotten on the radio inside the vehicle. But I wasn't
3 going to. I wasn't -- I wasn't about to take my
4 attention off of him.

5 Q. (BY MS. KENNEDY) Okay. So you think you
6 would have had to take your attention off of him in order
7 to create distance between you and Gage Lorentz in order
8 to call for backup.

9 MS. LYMAN: Objection. Form.

10 A. Yes.

11 Q. (BY MS. KENNEDY) Why?

12 A. Why -- I don't understand the "why."

13 Q. I don't understand why you're saying you had
14 to break communication with Gage Lorentz in order to
15 retreat to the inside of your vehicle to call for backup.

16 MS. LYMAN: Objection. Form and foundation.

17 A. I was not -- I was not going to walk away
18 from him. I was not going to take my attention off of
19 him.

20 Q. (BY MS. KENNEDY) And I know that. That's
21 what you said.

22 A. Yes.

23 Q. Right. But I'm saying, well, couldn't you
24 keep your attention on him while retreating to call for
25 backup to your vehicle?

Page 233

1 A. I don't think that would be very effective.

2 Q. So you decided not to.

3 A. Yes.

4 Q. But you could have.

5 A. Yeah, I suppose I could have.

6 Q. And wouldn't you agree that it would have
7 been objectively reasonable to create distance between
8 you and Gage Lorentz after you shot the Taser at him and
9 it failed to work?

10 MS. LYMAN: Objection. Form and foundation.

11 A. No.

12 Q. (BY MS. KENNEDY) I'm going to start playing
13 plaintiffs' exhibit of the walkthrough of the scene at
14 4:10.

15 (Video played.)

16 Q. (BY MS. KENNEDY) So at the point where you
17 knew Gage Lorentz was not reaching for your pistol, at
18 that point is when you decided to unholster your gun.

19 MS. LYMAN: Objection. Form.

20 A. Yes.

21 Q. (BY MS. KENNEDY) At that point had you
22 decided to kill Gage Lorentz?

23 MS. LYMAN: Objection. Form and foundation.

24 A. No.

25 Q. (BY MS. KENNEDY) So at the point that you

59 (Pages 230 to 233)

Page 238

1 A. The black thing sticking up.
 2 **Q. Right.**
 3 A. The --
 4 **Q. It's within the holster and it comes back**
 5 **and forth when you're using the holster.**
 6 A. You're talking about the rotating strap.
 7 **Q. Not the rotating strap. I'm talking about**
 8 **what's to the right of the rotating strap sticking**
 9 **straight up. Do you recognize what that is?**
 10 MS. LYMAN: Objection. Foundation.
 11 A. I don't recognize that.
 12 **Q. (BY MS. KENNEDY) You don't recognize what**
 13 **that is. What do you recognize, in terms of the photo in**
 14 **Exhibit I, that would indicate it would prevent some**
 15 **suspect from drawing your gun from this holster?**
 16 A. It would have the retaining strap and then
 17 there's a -- there's a thumb release that's on the inside
 18 of the holster.
 19 **Q. So the thumb release on the inside of the**
 20 **holster, is that the black piece that is sticking up from**
 21 **within the holster?**
 22 A. I don't think we're seeing that from -- I
 23 don't think we're seeing that. That's...
 24 **Q. You don't know what that is?**
 25 A. There's a piece of plastic there that --

Page 239

1 **Q. Okay. Why don't we hold up the exhibit so**
 2 **we are talking about the same thing. If you could hold**
 3 **up the exhibit the way I'm holding it up towards you.**
 4 A. (Witness complies.)
 5 **Q. Okay. So when you hold the exhibit like**
 6 **this and you talk about this strap that is pulled back,**
 7 **what is that?**
 8 A. Okay. This strap is a strap that goes over
 9 the firearm while it's in the holster.
 10 **Q. Okay. So that was over the firearm in your**
 11 **holster when you were with Gage Lorentz.**
 12 A. Yes.
 13 **Q. Okay. What about the black piece that my**
 14 **thumb is on now? What is that?**
 15 A. Okay. That -- that's a piece of plastic
 16 that's designed to help keep from reaching past.
 17 **Q. So what is that piece of plastic called that**
 18 **prevents a suspect from reaching past your gun and**
 19 **pulling it out of the holster?**
 20 MS. LYMAN: Objection. Foundation.
 21 **Q. (BY MS. KENNEDY) What --**
 22 A. I'm not familiar with the name for that
 23 piece.
 24 **Q. What does your training tell you about how**
 25 **that piece prevents someone from pulling your -- from**

Page 240

1 **getting to your gun?**
 2 A. It's just a shield.
 3 **Q. It's just a shield, but it's a shield that's**
 4 **used to prevent people from getting to your gun.**
 5 **Correct?**
 6 MS. LYMAN: Objection. Form.
 7 A. Yeah. It -- it works in tandem with the
 8 rest of the -- of the retaining devices.
 9 **Q. (BY MS. KENNEDY) Okay. So then directly to**
 10 **the left of that back -- black piece within the holster,**
 11 **what is that?**
 12 MS. LYMAN: Objection. Form.
 13 **Q. (BY MS. KENNEDY) If you know.**
 14 A. It looks to me like the strap that goes onto
 15 the belt.
 16 **Q. Okay. So you think that that is a strap**
 17 **that connects it to a belt?**
 18 A. Yes.
 19 **Q. Okay. And so what other function within the**
 20 **holster itself presents -- prevents someone from drawing**
 21 **your Sig 220 out of this holster?**
 22 A. Okay. There are -- there's a release
 23 mechanism that's on the inside of the holster.
 24 **Q. And what is --**
 25 A. And I don't think we see that in this photo.

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1 **Q. And -- right. And within the holster, you**
 2 **need to push that release mechanism in order to draw the**
 3 **gun. Correct?**
 4 MS. LYMAN: Objection. Form and foundation.
 5 A. Correct.
 6 **Q. (BY MS. KENNEDY) So the holster locks the**
 7 **gun in place within your holster. Correct?**
 8 A. Yes.
 9 **Q. And it locks the Sig 220 in place within**
 10 **this holster. Correct?**
 11 A. Yes.
 12 **Q. So you had a holster that matched your gun**
 13 **so that the gun could not be removed from your holster by**
 14 **a suspect.**
 15 MS. LYMAN: Objection. Form and foundation.
 16 **Q. (BY MS. KENNEDY) Correct?**
 17 A. All it does is it makes it harder for a
 18 suspect to remove the gun from the holster.
 19 **Q. Right. But how in the world can a suspect**
 20 **remove a gun from a holster if it's locked within the**
 21 **holster?**
 22 MS. LYMAN: Objection. Form and foundation.
 23 A. Any of these pieces are breakable.
 24 **Q. (BY MS. KENNEDY) But in a hand-to-hand**
 25 **match, how does a suspect break any of the pieces within**

61 (Pages 238 to 241)

Page 250

1 **Q. Was the second shot -- if you did not intend**
 2 **to shoot him the second time, when the firearm went off**
 3 **the second time, did you intend to kill Gage Lorentz at**
 4 **that moment?**

5 MS. LYMAN: Objection. Form and foundation.

6 A. No.

7 MS. KENNEDY: I'm going to close this out.
 8 It's 3:52. I would like to take a ten-minute break at
 9 this point. Wait. Wait. Before we take a break, is
 10 there something I need to clarify before we go on break?

11 (Discussion held off the record.)

12 **Q. (BY MS. KENNEDY) It was -- I understood**
 13 **your testimony to be -- but I just want to clarify it --**
 14 **that you did not intend to shoot Gage Lorentz the second**
 15 **time.**

16 A. When I shot him the first time, I had hoped
 17 that would stop the altercation. And I thought that it
 18 was possible that the first shot didn't hit him. And the
 19 second shot was deliberate.

20 **Q. So you intended to shoot him the second**
 21 **time?**

22 A. Yes.

23 **Q. Because you didn't know whether you had shot**
 24 **him the first time.**

25 A. He was continuing to resist.

Page 251

1 **Q. Okay. What I'm trying to understand is, you**
 2 **said you intended to shoot him the first time. Right?**

3 A. Yes.

4 **Q. But you don't know whether you hit him the**
 5 **first time?**

6 A. Correct.

7 **Q. And you were still on the ground with Gage**
 8 **the first time you shot him?**

9 A. Yes.

10 **Q. And at that point did you get up and back**
 11 **away and shoot him again?**

12 MS. LYMAN: Objection. Form and foundation.

13 A. No.

14 **Q. (BY MS. KENNEDY) Okay. But that's what you**
 15 **told the officers during the walkthrough.**

16 A. Yes.

17 **Q. Okay. Why were you mistaken as to when --**
 18 **and you also told the officers that while you were**
 19 **standing up and backing away is when Gage stood up and**
 20 **was coming for you. Do you remember saying that?**

21 A. I do remember saying that.

22 **Q. And that's also inaccurate. Right?**

23 A. Yes.

24 **Q. Why did you tell the officers that Gage had**
 25 **stood up and was coming towards you when in fact he never**

Page 252

1 did that?

2 MS. LYMAN: Objection. Form and foundation.

3 A. It was what I remembered at the time.

4 **Q. (BY MS. KENNEDY) Okay. So what you**
 5 **remembered at the time and told the officers at the time**
 6 **was wholly inaccurate.**

7 MS. LYMAN: Objection. Form and foundation.

8 **Q. (BY MS. KENNEDY) You would agree?**

9 A. I don't think it was completely inaccurate.

10 I was truthful about shooting him twice.

11 **Q. Well, but you -- you weren't truthful about**
 12 **shooting him twice insofar as you said you shot him once**
 13 **and didn't know if you'd hit him. Right?**

14 MS. LYMAN: Objection. Form and foundation.

15 A. Correct.

16 **Q. (BY MS. KENNEDY) All right. So the first**
 17 **time you shot, you intended to shoot. And you say it's**
 18 **true that you shot a man in the leg and didn't know you'd**
 19 **hit him.**

20 MS. LYMAN: Objection. Form.

21 **Q. (BY MS. KENNEDY) Is that your testimony**
 22 **under oath; that you shot a man in the leg while you were**
 23 **both on the ground and you didn't know whether you'd hit**
 24 **him?**

25 A. Yes. We know that to be true now.

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1 **Q. Okay. How do you know that to be true now?**

2 A. Well, I've been -- I've been told that both
 3 shots were -- hit Mr. Lorentz.

4 **Q. Okay. So at the time that you were on the**
 5 **ground with Mr. Lorentz, it's your testimony under oath**
 6 **today that when you were both on the ground and you shot**
 7 **him in the leg, you didn't know that you'd hit him in the**
 8 **leg?**

9 A. Correct.

10 **Q. All right. And then when you shot the gun a**
 11 **second time, it's your testimony under oath today that**
 12 **you intended to shoot him a second time.**

13 A. Yes.

14 **Q. But you don't know whether when you shot him**
 15 **the second time -- it's your testimony under oath that**
 16 **when you shot him the second time, you didn't know where**
 17 **you'd hit him?**

18 MS. LYMAN: Objection. Form and foundation.

19 A. I did not know.

20 **Q. (BY MS. KENNEDY) Okay. But your testimony**
 21 **is under oath here today that you intended to shoot him a**
 22 **second time.**

23 A. I delivered a second shot in an attempt to
 24 stop the fight when I found no reaction to the first
 25 shot.

64 (Pages 250 to 253)

Page 262

1 Q. Based on what? Based on your memory that we
2 now know is inaccurate of what happened?

3 MS. LYMAN: Objection. Form and foundation.

4 A. That's what I perceived in that moment.

5 Q. (BY MS. KENNEDY) Sitting here today you're
6 now saying that what you perceived after watching the
7 video is that after you had shot Gage in the leg that he
8 was still fighting you.

9 MS. LYMAN: Objection. Form and foundation.

10 A. Yes.

11 Q. (BY MS. KENNEDY) Are you saying he took a
12 swing at you? Are you saying that he tried to kick you?

13 A. I believe that we were in -- we were
14 fighting over the weapon itself.

15 Q. Do you believe that Gage was afraid you
16 would kill him?

17 MS. LYMAN: Objection. Form and foundation.

18 A. I don't know. I don't know what he was
19 thinking.

20 Q. (BY MS. KENNEDY) Right. How was he a
21 deadly threat when you had shot him a second time?

22 MS. LYMAN: Objection. Form and foundation.

23 A. He'd already fought with me over my weapon,
24 and I wasn't going to give him an opportunity to take it.

25 Q. (BY MS. KENNEDY) So the second time you

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1 had missed.

2 Q. (BY MS. KENNEDY) Right. So you didn't take
3 time after you shot the first time to see whether you had
4 even hit him?

5 MS. LYMAN: Objection. Form and foundation.

6 A. There was nothing that indicated that I hit
7 him; so I shot a second time.

8 Q. (BY MS. KENNEDY) Well, you were just not
9 perceiving reality correctly. Because, in fact, when you
10 shot him the first time, you hit him in the leg. So if
11 you had assessed the situation, you would have been able
12 to see that you had hit Gage Lorentz in the leg.

13 MS. LYMAN: Objection. Form and foundation.

14 Q. (BY MS. KENNEDY) Wouldn't you agree based
15 on your body-worn camera footage?

16 A. No.

17 Q. Why not?

18 A. Okay. This is --

19 Q. What facts do you have to support your
20 assertion that after you shot Gage the first time it hit
21 him in the leg?

22 MS. LYMAN: Objection. Form and foundation.

23 A. I didn't see anything and I didn't feel like
24 he reacted.

25 Q. (BY MS. KENNEDY) Right. Because what

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1 shot him it was so he could never have an opportunity
2 ever again to take your weapon?

3 MS. LYMAN: Objection. Form and foundation.

4 A. It was to end the fight.

5 Q. (BY MS. KENNEDY) After you shot him the
6 first time in the leg and he was on the ground, did you
7 take time to reassess to determine whether you needed to
8 take another shoot?

9 MS. LYMAN: Objection. Form and foundation.

10 A. I didn't have that luxury.

11 Q. (BY MS. KENNEDY) Okay. So your answer is
12 no; after you shot him and he was on the ground, you did
13 not take time to reassess to determine whether you needed
14 to shoot him again.

15 A. I shot him until the threat ceased, which is
16 consistent with my training.

17 Q. Okay. But that's not my -- that's not my
18 question. My question is: After you shot him the first
19 time, as you can see on the video -- now that you can
20 watch the video -- you shot him the first time and he's
21 on back and you shot him in the leg, after you shot him
22 the first time, did you take time to reassess to see
23 whether you needed to shoot him again?

24 MS. LYMAN: Objection. Form and foundation.

25 A. No. The only thing I believed was that I

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1 you're -- you're saying your memory tells you that what
2 you did was actually stand up, take steps back, and shoot
3 him because he stood up and was coming for you. That's
4 what your mind remembers happened. Right?

5 MS. LYMAN: Objection. Form and foundation.

6 Q. (BY MS. KENNEDY) Right?

7 A. Yes.

8 Q. Right. So even though your counsel showed
9 you what really happened, your mind still believes that
10 Gage Lorentz stood up after the first shot and was coming
11 for you?

12 MS. LYMAN: Objection. Form and foundation.

13 A. That is what I remember.

14 Q. (BY MS. KENNEDY) And is that what happens
15 in your dreams?

16 A. Yes.

17 MS. KENNEDY: Take a break now.

18 THE VIDEOGRAPHER: The time is 4:07 p.m.
19 We're off the record.

20 (Break taken from 4:07 p.m. to 4:23 p.m.)

21 THE VIDEOGRAPHER: The time is 4:23 p.m.
22 We're on the record.

23 Q. (BY MS. KENNEDY) Do you agree with me that
24 when you shot Gage Lorentz the first time, he was
25 unarmed?

67 (Pages 262 to 265)

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1 MS. LYMAN: Objection. Form and foundation.
 2 A. I never knew if he was armed or not.
 3 Q. (BY MS. KENNEDY) Okay. Do you agree with
 4 me that when you shot Gage Lorentz the first time, you
 5 did not see anything that would indicate that he was
 6 armed?
 7 MS. LYMAN: Objection. Form and foundation.
 8 A. No.
 9 Q. (BY MS. KENNEDY) You don't agree -- agree
 10 with me on that?
 11 A. No.
 12 Q. Why not?
 13 A. I remember that he was trying to put his
 14 hands in his pockets. And I had said something about not
 15 putting your hands in your pockets.
 16 Q. Okay. So because he didn't put his hands in
 17 his pockets, you think that perhaps Gage Lorentz was
 18 armed before you shot him?
 19 MS. LYMAN: Objection. Form and foundation.
 20 A. I thought that it was possible that he could
 21 be armed.
 22 Q. (BY MS. KENNEDY) Okay. You didn't see
 23 anything in his pockets that would indicate to you that
 24 he was armed.
 25 MS. LYMAN: Objection. Form and foundation.

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1 A. Correct.
 2 Q. (BY MS. KENNEDY) So when you say you didn't
 3 know whether he was armed, it's because you never asked
 4 him, "Are you armed?"
 5 MS. LYMAN: Objection. Form and foundation.
 6 A. I don't think I ever got that opportunity.
 7 Q. (BY MS. KENNEDY) So when -- when you first
 8 were talking to Gage during the 30-second buffer, you
 9 didn't have an opportunity to say, "Sir, do you have any
 10 weapons on you?"
 11 A. I never did ask him that.
 12 Q. But you had an opportunity to ask him that
 13 when you first talked to him. Right?
 14 MS. LYMAN: Objection. Form and foundation.
 15 A. That's -- that wasn't the question that I
 16 started with.
 17 Q. (BY MS. KENNEDY) But you had an opportunity
 18 to ask him, "Sir, do you have any weapons on you?"
 19 A. I could have started with that, yes.
 20 Q. Right. In fact, you could have asked him
 21 whether he was armed before you asked him to turn around.
 22 Right?
 23 MS. LYMAN: Objection. Form and foundation.
 24 Q. (BY MS. KENNEDY) I'm just trying to
 25 understand when you testify under oath that you never had

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1 A. No.
 2 Q. (BY MS. KENNEDY) You didn't see anything in
 3 his hands that would indicate to you that he was armed.
 4 A. Correct.
 5 Q. You didn't see anything on his body that
 6 would indicate to you that he was armed.
 7 MS. LYMAN: Objection. Form.
 8 A. Well, I didn't have a complete look at his
 9 body to know whether or not he had something.
 10 Q. (BY MS. KENNEDY) Okay. So you saw the
 11 front of his body. Right?
 12 A. Yes.
 13 Q. Nothing in the front of his body made you
 14 think he was armed.
 15 MS. LYMAN: Objection. Form.
 16 A. Correct.
 17 Q. (BY MS. KENNEDY) Okay. And you're saying
 18 that you never saw the back side of his body?
 19 A. Correct.
 20 Q. So you never saw whether he was armed
 21 because you never saw the back side of his body?
 22 A. Correct.
 23 Q. Nothing that you saw about his body would
 24 indicate to you that he was armed.
 25 MS. LYMAN: Objection. Form and foundation.

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1 an opportunity to ask him whether his -- he was armed,
 2 what is the basis of that assertion?
 3 MS. LYMAN: Objection. Form.
 4 A. I just never asked him.
 5 Q. (BY MS. KENNEDY) Right. But you could have
 6 asked him. Right?
 7 A. Sure, I could have.
 8 Q. So in fact, you did have an opportunity to
 9 ask him whether he was armed.
 10 A. Yeah, I could have.
 11 Q. Right. And it's on you that you don't know
 12 whether he's armed. Right?
 13 MS. LYMAN: Objection. Form and foundation.
 14 A. Right. But even if he said no, I'm not
 15 going to take that.
 16 Q. (BY MS. KENNEDY) Do you have any reason not
 17 to believe him if you say, "Sir, Mr. Lorentz, you sure
 18 were driving fast. What were you -- why were you" -- did
 19 you ever ask him, "Sir, why were you driving so fast?"
 20 A. No, I never asked him that.
 21 Q. Did you ever ask him, "Sir, have you had
 22 anything to drink?"
 23 A. I didn't ask him that.
 24 Q. Right. Did you ever ask him, "Sir, are you
 25 having a hard day?"

68 (Pages 266 to 269)

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1 A. I asked him if there was an emergency.
 2 **Q. Okay. When you asked him, "Is there an**
 3 **emergency," what did he say?**
 4 A. I didn't get a response from him.
 5 **Q. Okay. No response at all?**
 6 A. No. I don't remember any response at all.
 7 **Q. Was -- when you asked him was there an**
 8 **emergency, was that during the buffering period?**
 9 A. Probably. I don't remember when it comes
 10 on.
 11 **Q. Okay. Okay. During the buffering period,**
 12 **other than asking him -- and so when you said, "Is there**
 13 **an emergency," he just ignored you?**
 14 MS. LYMAN: Objection. Form and foundation.
 15 A. He had no response.
 16 **Q. (BY MS. KENNEDY) No response at all.**
 17 A. Correct.
 18 **Q. Okay. What else did you ask him where he**
 19 **had no response?**
 20 A. The very first thing that I asked him, I
 21 believe what I said was, "Talk to me and tell me what's
 22 going on today." Those were my first words to him.
 23 **Q. So your first words to him were -- before**
 24 **you said, "What is your name? How are you?" you said,**
 25 **"Talk to me and tell me what's going on today"?**

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1 **A. Yes.**
 2 **Q. So you ordered him, "Talk to me"?**
 3 MS. LYMAN: Objection. Form and foundation.
 4 **Q. (BY MS. KENNEDY) Is that how you talk to**
 5 **people? Do you walk up to people you don't know and say,**
 6 **"Talk to me"?**
 7 MS. LYMAN: Objection. Form.
 8 A. Not normally.
 9 **Q. (BY MS. KENNEDY) Okay. So why did you walk**
 10 **up to him and say, "Talk to me"?**
 11 A. "Talk to me and tell me what's going on
 12 today."
 13 **Q. Is that -- is that how you said it to him?**
 14 A. That's an open-ended question and he could
 15 have said anything.
 16 **Q. Okay. So is -- but does that -- do you go,**
 17 **"Talk to me. Tell me what's going on today." Is that**
 18 **the inflection you used when you talked to Gage Lorentz?**
 19 A. Yeah, probably.
 20 **Q. You don't remember specifically?**
 21 A. I wasn't angry. I wasn't accusatory --
 22 accusing him of anything, and I just wanted him to have
 23 an opportunity to talk.
 24 **Q. So when you walked up to him after you'd**
 25 **seen him run into the -- you know, destroy the sign, you**

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1 walk up to him and you say, "Talk to me. What's going on
 2 today," how close were you to him at that point?
 3 A. I was probably 7 to 10 feet.
 4 **Q. And how did he respond to that question?**
 5 A. He said, "Where is he?"
 6 **Q. Did you think it was an odd response to**
 7 **"Talk to me. Tell me what's going on today," to say,**
 8 **"Where is he"?**
 9 MS. LYMAN: Objection. Form.
 10 A. Yes.
 11 **Q. (BY MS. KENNEDY) Were that -- were you**
 12 **trained to recognize that a response like that could**
 13 **indicate that someone was in the midst of a mental health**
 14 **crisis?**
 15 MS. LYMAN: Objection. Form and foundation.
 16 A. No.
 17 **Q. (BY MS. KENNEDY) Have you had any training**
 18 **in crisis intervention training to recognize when someone**
 19 **is in a mental health crisis?**
 20 MS. LYMAN: Objection. Foundation.
 21 A. I have not had anything specific.
 22 **Q. (BY MS. KENNEDY) Ever?**
 23 A. No. We talked about dealing with -- when I
 24 was at FLETC, we had a course on dealing with people with
 25 mental illness, but --

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1 **Q. Was that in 2005?**
 2 A. Yes.
 3 **Q. Okay. And when someone responds, "Where is**
 4 **he" and you don't know who he's talking about or where**
 5 **who might be, does it cause you to think that you might**
 6 **be engaging with someone with a mental health disability**
 7 **or someone who is in a mental health crisis?**
 8 MS. LYMAN: Objection. Form and foundation.
 9 A. What I actually wondered was whether or not
 10 he was using something.
 11 **Q. (BY MS. KENNEDY) So did you ask him, "Sir,**
 12 **have you imbibed anything that would cause you to think**
 13 **that someone's there that's not there?" Or why did you**
 14 **think -- why did you think that because he said, "Where**
 15 **is he," he had used drugs?**
 16 MS. LYMAN: Objection. Form and foundation.
 17 A. I didn't think that he had used drugs. I
 18 thought it was a possibility that he had used some drugs.
 19 But that was my starting point. "Where is
 20 he?" Well, where is who? Then I got no response. Maybe
 21 he realized that that response made no sense. I don't
 22 know.
 23 **Q. (BY MS. KENNEDY) Okay. So did you say:**
 24 **Sir, I don't know who you're talking about. What are you**
 25 **talking about? How did that happen?**

69 (Pages 270 to 273)

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1 A. I just asked, "Where's who?" Then I got no
 2 response. And I asked, "Is there some kind of an
 3 emergency?"
 4 And I thought that that was an important
 5 question. Well, maybe, you know, if there -- if there
 6 was an emergency, that would certainly explain the
 7 speeding and the lack of paying attention.
 8 Maybe there -- maybe there really was
 9 something wrong, and that's where I wanted him to talk to
 10 me.
 11 Q. So did you ask him, "Sir, is there something
 12 wrong?"
 13 A. "Is there some kind of emergency?" I
 14 remember asking him that.
 15 Q. And he ignored you. And then what did you
 16 ask next?
 17 A. "Could you tell me your name?"
 18 Q. And did he tell you his name?
 19 A. He did not.
 20 Q. And then what did you ask him next?
 21 A. I -- I said something to the effect of, "If
 22 you can't tell me your name, can you -- do you have any
 23 identification with you?"
 24 Q. What did he say to that?
 25 A. He said, "Sure. It's in the truck. Why

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1 A. Yes.
 2 Q. (BY MS. KENNEDY) Okay. So you knew as soon
 3 as you left your vehicle and closed the distance between
 4 you and Gage that you would have no ability, once you did
 5 that, to call for backup without retreating to your
 6 vehicle.
 7 MS. LYMAN: Objection. Form and foundation.
 8 A. Yes.
 9 Q. (BY MS. KENNEDY) Do you agree with me that
 10 when you shot Gage the first time, he did not have his
 11 hands around or on your head?
 12 MS. LYMAN: Objection. Form and foundation.
 13 A. No. I think he did have them around my
 14 head.
 15 Q. (BY MS. KENNEDY) All right. So is that --
 16 A. He had taken his hands off the weapon after
 17 trying to disarm me.
 18 Q. Okay. So when he -- when you -- okay. So
 19 why do you think he was trying to disarm you?
 20 A. To take my weapon?
 21 Q. Yeah. Why do you -- why -- you keep saying
 22 that you thought he was trying to take your weapon. But
 23 he never took your weapon out of the holster, did he?
 24 MS. LYMAN: Objection. Form.
 25 A. No. He was trying to disarm me. He never

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1 don't you go get it."
 2 Q. Okay. And so, at that point, why didn't you
 3 call for backup?
 4 A. Okay. Again, I didn't really feel that
 5 there was a need for backup. And even if I wanted
 6 backup, my portable radio was unreliable for getting
 7 backup.
 8 Q. Why was your portable radio unreliable for
 9 getting backup?
 10 MS. LYMAN: Objection. Form and foundation.
 11 A. It does not work appropriately in that
 12 location.
 13 Q. (BY MS. KENNEDY) How do you know your
 14 portable radio doesn't work appropriately in that
 15 location?
 16 A. I've used it before.
 17 Q. You've used the portable radio in that
 18 location and it has failed to work. When you say it
 19 doesn't work, how does it not work, to your knowledge?
 20 A. It does not produce a strong enough signal
 21 to reach out to the repeater.
 22 Q. So you knew when you closed distance on Gage
 23 and started this conversation, that you would have no way
 24 to call for backup.
 25 MS. LYMAN: Objection. Form and foundation.

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1 successfully removed the weapon.
 2 Q. (BY MS. KENNEDY) Right. He never -- he
 3 never even -- he never even got his hands on the holster.
 4 Right?
 5 MS. LYMAN: Objection. Form and foundation.
 6 A. Oh, but he did.
 7 Q. (BY MS. KENNEDY) Oh, he did. He touched --
 8 he touched your holster.
 9 A. I felt his hands on my hand, and then I felt
 10 him reach around on either side of my hands to attempt to
 11 remove the weapon from the holster.
 12 Q. Okay. How could he -- because I'm trying to
 13 visualize here. If you have a holster and you have your
 14 hand on top of the holster, how can someone get the
 15 weapon out of the holster?
 16 MS. LYMAN: Objection. Form and foundation.
 17 Q. (BY MS. KENNEDY) It's locked inside.
 18 A. Okay. The weapon itself is -- is larger
 19 than my hand. And so I am -- I could feel him. He tried
 20 to pull my hand away.
 21 And then I felt him. He was trying to grab
 22 the -- where the magazine bottom is and use that. And
 23 then I could feel him coming in from the other side using
 24 the second hand to try and get control of the holster.
 25 Q. Okay. And you didn't tell anyone that

70 (Pages 274 to 277)

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1 during your previous statements to law enforcement.
 2 Right?
 3 MS. LYMAN: Objection. Form and foundation.
 4 A. I don't know that we went into a lot of
 5 detail on the attempt to disarm me.
 6 Q. (BY MS. KENNEDY) Okay. So your testimony
 7 here under that oath is that Gage Lorentz attempted to
 8 disarm you by getting the gun out of your holster.
 9 Right?
 10 A. Yes.
 11 Q. Okay. And you said under oath earlier that
 12 Gage Lorentz stopped trying to get the gun out of your
 13 holster and put his hands behind your head. Correct?
 14 MS. LYMAN: Objection. Form and foundation.
 15 A. I think he was just punching me in the head.
 16 Q. (BY MS. KENNEDY) Okay. So he never put his
 17 hands on top of your head?
 18 MS. LYMAN: Objection. Form and foundation.
 19 A. I think that was earlier.
 20 Q. (BY MS. KENNEDY) Okay. So when Gage
 21 Lorentz stopped going for your weapon, where was his
 22 hands?
 23 A. He was punching me in the head.
 24 Q. Okay. So he was -- were you laying on the
 25 ground at that time?

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1 A. Yeah. I was on my knees trying to get up.
 2 Q. Okay. So you're on your knees. You guys
 3 had both fallen to the ground.
 4 MS. LYMAN: Objection. Form and foundation.
 5 A. No. He was on his feet. I was on the
 6 ground trying to get up.
 7 Q. (BY MS. KENNEDY) Why did you fall to the
 8 ground?
 9 A. He pushed me backwards after I attempted the
 10 drive-stun.
 11 Q. Okay. So after you attempted to drive stun
 12 him, he pushed you and you fell on the ground?
 13 A. Yes.
 14 Q. Okay. And at that point you got up on your
 15 knees?
 16 A. Yes.
 17 Q. Okay. And Gage is still standing over you
 18 at that point?
 19 A. Yes.
 20 Q. At that point you do not draw the gun?
 21 A. Correct.
 22 Q. Okay. At that point he hits you in the
 23 face.
 24 A. He hit me in the face before he knocked me
 25 on the ground, and then he started punching me in the

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1 face and head after I was --
 2 Q. How many times did you punch you in the face
 3 and head?
 4 A. I don't know.
 5 Q. More than twice?
 6 A. Yes.
 7 Q. Where did the punches land on your face?
 8 A. Sort of on the cheek and around the temple
 9 here.
 10 Q. Is that the only side of the face that he
 11 hit is what you indicated there?
 12 A. Mostly what I remember him is him hitting me
 13 in the head.
 14 Q. Where in the head did he hit you?
 15 A. Right up here.
 16 Q. With his closed fist?
 17 MS. LYMAN: Objection. Form and foundation.
 18 A. I'm not sure I could see whether or not his
 19 fist was closed or not.
 20 Q. (BY MS. KENNEDY) Well, did you feel like
 21 you were being slapped or punched?
 22 A. I felt like I was being punched.
 23 Q. Okay. And how many times did you feel Gage
 24 Lorentz punch you before you drew your weapon?
 25 A. Well, he punched me several times and I

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1 don't know how many times. Then he attempted to take the
 2 weapon, and he leaned across me and used both hands to
 3 try and take it. I was holding it into the holster. He
 4 couldn't get it. He went back to hitting me. I drew the
 5 weapon and delivered that first shot.
 6 Q. Okay. So it's your testimony now here under
 7 oath that you delivered the first shot into Gage Lorentz
 8 when you were still on the ground?
 9 A. Yes.
 10 Q. Okay. And that at the time that you drew
 11 your weapon when you were still on the ground, Gage
 12 Lorentz was hitting you in the head?
 13 A. Correct.
 14 Q. Okay. At the time that Gage Lorentz was
 15 hitting you in the head was he using deadly force?
 16 MS. LYMAN: Objection. Form and foundation.
 17 A. Hitting me in the head, yeah. Possibly.
 18 Q. (BY MS. KENNEDY) Have you ever been --
 19 A. Any -- any one of those could have knocked
 20 me out.
 21 Q. Okay. So you were afraid when you were on
 22 the ground that Gage Lorentz could hit you in the head
 23 and knock you out?
 24 A. No.
 25 Q. No?

71 (Pages 278 to 281)

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1 A. No. It was -- it was after he attempted to
2 take the weapon.
3 **Q. That he hit you in the head. So hard that**
4 **you thought he might be able to knock you out?**
5 A. No.
6 MS. LYMAN: Objection. Form and foundation.
7 **Q. (BY MS. KENNEDY) Okay. I'm trying to**
8 **understand where he hit you --**
9 A. I think you're trying to make assertions
10 that aren't correct.
11 **Q. No, I'm not. That's not true at all. I'm**
12 **trying to understand what actually happened here.**
13 **You're -- I think you're projecting. I think you're**
14 **accusing me of doing what you're doing, actually.**
15 MS. LYMAN: Objection.
16 **Q. (BY MS. KENNEDY) What I'm trying to**
17 **understand from you -- and trying to get an answer**
18 **from -- is when you shot Gage Lorentz, where were his**
19 **hands?**
20 A. I think he was hitting me in the head with
21 his hands.
22 **Q. Okay. And you say that he's punching you in**
23 **your head -- in -- on your head with his hands with his**
24 **right fist and it's hitting you on top of your head?**
25 MS. LYMAN: Objection. Form and foundation.

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1 A. Yeah, I think so.
2 **Q. (BY MS. KENNEDY) But at no point when he**
3 **was hitting you on top of your head did you think that**
4 **you were going to knocked unconscious.**
5 A. I believe that it was possible I could be
6 knocked unconscious.
7 **Q. Okay. So you thought maybe -- just like you**
8 **thought it was possible he could be armed, you thought**
9 **possibly he could knock you conscious, but you didn't**
10 **really have any evidence that he was knocking you**
11 **unconscious.**
12 MS. LYMAN: Objection. Form and foundation.
13 A. I have a suspect who's resisting and
14 fighting. Once he'd knocked me on the ground, he had the
15 opportunity to run away.
16 **Q. (BY MS. KENNEDY) Right. He could have run**
17 **away at any time. Right?**
18 A. Right.
19 **Q. And running away is not using deadly force,**
20 **you'd agree. Right?**
21 A. Right.
22 **Q. Right. Okay. But what I'm trying to get to**
23 **is you were never -- did anyone ever tell you as a result**
24 **of Gage hitting you that you suffered a concussion?**
25 A. No.

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1 **Q. Okay. So you know that you weren't hit hard**
2 **enough to suffer a concussion. Right?**
3 A. Right.
4 **Q. So you certainly weren't hit hard enough to**
5 **be knocked unconscious. Right?**
6 MS. LYMAN: Objection. Form and foundation.
7 **Q. (BY MS. KENNEDY) I'm just asking you if you**
8 **know the facts.**
9 A. Okay. What would it take for him to knock
10 me unconscious? He's already hitting me in the head.
11 **Q. (BY MS. KENNEDY) I'm asking you whether you**
12 **ever told any medical personnel, "He hit me so hard that**
13 **I thought I could be knocked unconscious." You never**
14 **told anyone that, did you?**
15 MS. LYMAN: Objection. Form.
16 A. I don't know what I discussed with the
17 doctor.
18 **Q. (BY MS. KENNEDY) Okay. You know now that**
19 **you never told anyone, "Oh, he was hitting me in the head**
20 **so hard that he could have knocked me unconscious."**
21 MS. LYMAN: Objection. Form and foundation.
22 **Q. (BY MS. KENNEDY) In fact, during your**
23 **interview with Detective Rostro, on page 31 of**
24 **Plaintiffs' Exhibit A, you stated that Mr. Lorentz was**
25 **hitting you but that it didn't hurt like you expected it**

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1 **to hurt. Is that accurate?**
2 A. I do remember saying that.
3 **Q. Right. If Mr. Lorentz was striking you and**
4 **it didn't hurt like you expected, why did you feel you**
5 **had to shoot him twice and kill him?**
6 MS. LYMAN: Objection. Form and foundation.
7 A. The shooting only took place after he
8 attempted to take my weapon.
9 **Q. (BY MS. KENNEDY) Okay. So since he had**
10 **attempted to take your weapon is why you shot him.**
11 A. Yes.
12 MS. LYMAN: Objection. Form and foundation.
13 **Q. (BY MS. KENNEDY) And that's the only reason**
14 **you shot him was because he had attempt -- you allege he**
15 **had attempted to take your weapon and that is why you**
16 **shot him?**
17 A. If he had never attempted to take the
18 weapon, I believe there would have been no shooting.
19 **Q. Okay. So the only reason you shot Gage**
20 **Lorentz is because you allege he attempted to take your**
21 **weapon.**
22 MS. LYMAN: Objection. Form and foundation.
23 A. Yes.
24 **Q. (BY MS. KENNEDY) All right. And what you**
25 **said -- what you said earlier was when you decided to**

72 (Pages 282 to 285)

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1 fuck, and you said it was unrehearsed? I'm really
 2 wondering why you're using profanity at this point.
 3 MS. LYMAN: Objection. Form.
 4 A. I don't know why I said that either of those
 5 times.
 6 Q. (BY MS. KENNEDY) Okay. Prior to the
 7 audible saying fuck, fuck at 03 and 05 on this, had you
 8 used profanity prior to this in your interaction with
 9 Gage Lorentz?
 10 A. Not at all that I remember.
 11 Q. Okay. So to the best of your recollection,
 12 you said fuck while you were both on the ground with the
 13 gun?
 14 A. Yes.
 15 Q. Okay.
 16 A. I remember that he used it with me when he
 17 said, "I didn't know who those people are."
 18 Q. Okay. So it was because he said, "I don't
 19 know who the fuck those people are," you decided you
 20 could use profanity too? Or was that the only time Gage
 21 used the F word?
 22 MS. LYMAN: Objection. Form and foundation.
 23 Q. (BY MS. KENNEDY) Why did you bring up that
 24 Gage used the F word?
 25 A. I don't know.

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1 Q. Certainly when he said, "I don't know who
 2 the fuck those boys are," that wasn't any cause to use
 3 deadly force, was it?
 4 MS. LYMAN: Objection. Form and foundation.
 5 A. I don't think there was any thought in my
 6 mind that I was using deadly force.
 7 Q. (BY MS. KENNEDY) At that point you hadn't
 8 decided to use deadly force. Right?
 9 A. Correct.
 10 Q. And at that point when he says, "I don't
 11 know who those boys are," that wasn't threatening to you,
 12 was it?
 13 A. No.
 14 (Video played.)
 15 Q. (BY MS. KENNEDY) Okay. At this point
 16 you're telling Gage Lorentz that he's under arrest.
 17 Correct?
 18 A. Yes.
 19 Q. At this point are you aware that you have
 20 shot him twice?
 21 MS. LYMAN: Objection. Form and foundation.
 22 A. I'm aware that I've shot him once.
 23 Q. (BY MS. KENNEDY) Okay. How are you aware
 24 that you have shot him once?
 25 A. I saw his reaction as I was breaking away

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1 from him.
 2 Q. Okay. I'm going to play that for you again.
 3 Each time that you pull the trigger, do you say the word
 4 fuck?
 5 MS. LYMAN: Objection. Form and foundation.
 6 A. I don't know.
 7 Q. (BY MS. KENNEDY) Let's watch it again. So
 8 this is the first.
 9 (Video played.)
 10 Q. (BY MS. KENNEDY) At this point when you're
 11 telling him he's under arrest, do you perceive him still
 12 to be a threat of great bodily harm or death?
 13 MS. LYMAN: Objection. Form.
 14 A. No.
 15 Q. (BY MS. KENNEDY) Okay. So at this point
 16 you can see that he's on the ground and he's unable to
 17 take your weapon from you. Correct?
 18 A. Yes.
 19 Q. And he's still unarmed. Right?
 20 MS. LYMAN: Objection. Form and foundation.
 21 A. Unknown to me.
 22 Q. (BY MS. KENNEDY) Right. But there's
 23 nothing that indicates here so far that he has a weapon.
 24 Like during the fight, he never pulled out a weapon.
 25 Right?

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1 A. Right.
 2 Q. And during the fight, he didn't say, "I've
 3 got a knife my back pocket," right, pull it on you?
 4 A. He say anything like that.
 5 Q. Right. He didn't pull out a firearm during
 6 the fight. Right?
 7 A. No.
 8 Q. So during the entire time that you're
 9 fighting him he doesn't in any way -- he never introduces
 10 a deadly weapon into the fight. Right?
 11 MS. LYMAN: Objection. Form and foundation.
 12 A. I disagree. He attempted to take mine.
 13 Q. (BY MS. KENNEDY) Okay. But he didn't take
 14 your weapon. Correct?
 15 A. Correct.
 16 Q. And he never introduced a deadly weapon into
 17 the fight, did he?
 18 MS. LYMAN: Objection. Form.
 19 A. I would disagree.
 20 Q. (BY MS. KENNEDY) Okay. What deadly weapon
 21 did he introduce into the fight?
 22 A. He attempted to take my weapon to introduce
 23 it into the fight.
 24 Q. Right. But he did not take your weapon.
 25 Correct?

75 (Pages 294 to 297)

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1 A. I -- I don't think I've seen those photos.
 2 (Exhibit H marked.)
 3 (Exhibit G marked.)
 4 **Q. (BY MS. KENNEDY) Okay. Those photos are**
 5 **marked as Plaintiffs' Exhibits H and G. Is that your gun**
 6 **depicted on Plaintiffs' Exhibit H and G. Yes?**
 7 A. G and H, yes. That looks like the weapon I
 8 was carrying that day.
 9 **Q. Okay. And do you see the scuff marks on --**
 10 **depicted in the photos on each side of your gun?**
 11 MS. LYMAN: Objection. Form and foundation.
 12 **Q. (BY MS. KENNEDY) Do you agree that that is**
 13 **dirt or scuff marks, or do you think that that was**
 14 **preexisting prior to your encounter with Gage Lorentz?**
 15 A. I don't know. I don't know if that's dirt
 16 or not.
 17 **Q. Right. So sitting here today looking at the**
 18 **slide that -- that Erik Westpfahl suggested to you shows**
 19 **that Gage Lorentz almost got your gun, can you tell from**
 20 **the slide whether your gun at this point is on the**
 21 **ground?**
 22 MS. LYMAN: Objection. Form and foundation.
 23 A. To me it doesn't look like it's on the
 24 ground.
 25 **Q. (BY MS. KENNEDY) So at this point Gage**

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1 **doesn't have -- isn't pressing your gun into the ground?**
 2 A. I don't think so.
 3 **Q. But you can't tell, can you?**
 4 A. I can't.
 5 **Q. And you don't know whether Gage was trying**
 6 **to disarm you to prevent you from killing him?**
 7 MS. LYMAN: Objection. Form and foundation.
 8 A. I wouldn't know.
 9 **Q. (BY MS. KENNEDY) And you don't know what**
 10 **Gage -- Gage's intent was when he was trying to, as you**
 11 **say, get the gun from you?**
 12 MS. LYMAN: Objection. Form and foundation.
 13 A. I think a reasonable officer would believe
 14 that the weapon is going to be taken from them and used
 15 against them.
 16 **Q. (BY MS. KENNEDY) Okay. But Gage never**
 17 **said, "I'm going to take your gun and use it against**
 18 **you."**
 19 A. No.
 20 **Q. Right. He never said, "I'm going to kill**
 21 **you."**
 22 A. No.
 23 **Q. He never threatened you verbally in any way?**
 24 MS. LYMAN: Objection. Form and foundation.
 25 A. I disagree.

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1 **Q. (BY MS. KENNEDY) Okay. He never threatened**
 2 **you verbally. Well, what? What did he say that you**
 3 **perceived to be a threat?**
 4 A. That whole comment about, "No, the other
 5 one."
 6 **Q. Okay. So when Gage said, when you -- you're**
 7 **the one who pulled the Taser on Gage while he was**
 8 **standing in the street. Correct?**
 9 MS. LYMAN: Objection. Form.
 10 **Q. (BY MS. KENNEDY) Right? You pulled the**
 11 **Taser on Gage when he was standing there in the street.**
 12 A. I -- I removed it from its holster.
 13 **Q. And you kept it in low-ready position or had**
 14 **you started to bring it up?**
 15 MS. LYMAN: Objection. Form and foundation.
 16 A. At that point it's what's call the display.
 17 It's been removed from the holster but it's not been
 18 pointed at the suspect.
 19 **Q. (BY MS. KENNEDY) Right. Did you -- when**
 20 **you removed your Taser from the holster, is that when**
 21 **Gage said, "You're going to have to use the other one"?**
 22 A. Yes.
 23 **Q. Okay. And you perceived that to be a**
 24 **threat?**
 25 A. It is a threat. Yes.

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1 **Q. Why is it a threat?**
 2 A. Okay. He's already trying to escalate that
 3 to deadly force.
 4 **Q. Oh, really? Why? Just -- why did you say**
 5 **-- how do you know he was just joking, like, "Hey.**
 6 **You're going to have to use the other one."**
 7 MS. LYMAN: Objection. Form and foundation.
 8 **Q. (BY MS. KENNEDY) Like, "Come on, big man.**
 9 **You're threatening me. You're going to have to use the**
 10 **other one."**
 11 MS. LYMAN: Objection. Form and foundation.
 12 **Q. (BY MS. KENNEDY) I mean, how do you know**
 13 **he's not just flicking you some shit?**
 14 MS. LYMAN: Objection. Form and foundation.
 15 A. Okay. Didn't -- didn't sound like anything
 16 other than a threat to me.
 17 **Q. (BY MS. KENNEDY) Okay. Has anyone ever**
 18 **flicked you shit before when you've been a cop?**
 19 MS. LYMAN: Objection. Form and foundation.
 20 A. Yes.
 21 **Q. (BY MS. KENNEDY) Right. Say things like,**
 22 **"Come on, big man. Why don't you take me." Has anyone**
 23 **said anything like that to you?**
 24 MS. LYMAN: Objection. Form and foundation.
 25 A. That's pretty rare.

78 (Pages 306 to 309)

Page 314

1 **Q. (BY MS. KENNEDY) So after he spoke those**
 2 **words, you were ready to use deadly force against Gage**
 3 **Lorentz.**

4 A. No.

5 MS. LYMAN: Objection. Form and foundation.

6 **Q. (BY MS. KENNEDY) You were ready to close**
 7 **distance on him and incapacitate him after he said those**
 8 **words.**

9 MS. LYMAN: Objection. Form and foundation.

10 A. I gave him an opportunity. I said to him,
 11 "I've told you to turn around and put your hands behind
 12 your back. Are you going to do it or not?"

13 **Q. (BY MS. KENNEDY) Oh. Oh, that's what --**
 14 **that's what the video shows you said?**

15 MS. LYMAN: Objection. Form and foundation.

16 A. That's what I remember saying.

17 **Q. (BY MS. KENNEDY) Right. But we know that**
 18 **your memory is not accurate, right, from watching the**
 19 **other video?**

20 MS. LYMAN: Objection. Form and foundation.

21 A. Well, I don't get everything wrong all the
 22 time.

23 **Q. (BY MS. KENNEDY) Right. And it's important**
 24 **when you take a human life not to get everything wrong,**
 25 **isn't it?**

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1 MS. LYMAN: Objection. Form and foundation.

2 **Q. (BY MS. KENNEDY) How can you trust your**
 3 **memory when you didn't accurately inform the officers as**
 4 **to how you shot and killed Gage Lorentz?**

5 MS. LYMAN: Objection. Form and foundation.

6 **Q. (BY MS. KENNEDY) If you don't know how you**
 7 **took a human life, how can you trust your memory on**
 8 **anything?**

9 MS. LYMAN: Objection. Form and foundation.

10 **Q. (BY MS. KENNEDY) You can answer the**
 11 **question.**

12 A. Okay. Which question did you want me to
 13 answer?

14 **Q. The last question.**

15 A. Okay.

16 THE WITNESS: Can you read that back to me,
 17 please.

18 (Requested portion was read.)

19 A. No. I do know that I took his life by
 20 shooting him.

21 **Q. (BY MS. KENNEDY) But you don't know -- I**
 22 **mean, when you walked around, you said you didn't know.**
 23 **You thought you had shot him. You didn't know whether**
 24 **you'd hit him, and that you stood up, took three steps**
 25 **back, and shot him again. And you know sitting here now**

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1 **that that's a completely false memory. Right?**

2 MS. LYMAN: Objection. Form and foundation.

3 A. Okay. I think -- I think you're trying to
 4 confuse me here. So I know that I delivered a first shot
 5 that I thought was unsuccessful. And then I shot him a
 6 second time.

7 **Q. (BY MS. KENNEDY) Well, you know what you**
 8 **said because we have a video of the walkthrough of what**
 9 **you said. Right?**

10 **What did you say? What did you tell the**
 11 **officers? What did you believe happened before you were**
 12 **presented with your own body-worn camera footage?**

13 MS. LYMAN: Objection. Form and foundation.

14 A. Okay. I believed that I had delivered one
 15 shot that was unsuccessful in subduing him and I
 16 delivered a second shot that incapacitated him.

17 **Q. (BY MS. KENNEDY) And you believed that you**
 18 **had stood up, walked backwards, and shot him a second**
 19 **time; and you believed that Gage Lorentz was coming for**
 20 **you when you delivered a second shot, that he was**
 21 **standing up. That's what you told the officers during**
 22 **the walkthrough. Correct?**

23 A. I don't remember --

24 MS. LYMAN: Objection. Form and foundation.

25 A. I don't remember him ever saying -- me ever

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1 saying that he was coming back at me.

2 **Q. (BY MS. KENNEDY) Okay. Sitting here today**
 3 **you don't remember that that's what you told --**

4 A. Correct.

5 **Q. Okay.**

6 (Video played.)

7 **Q. (BY MS. KENNEDY) Why did you say fuck,**
 8 **then? Why did you scream fuck at that point? Do you**
 9 **know?**

10 A. No, I don't.

11 **Q. Okay. And that was --**

12 MS. KENNEDY: I'm going to go off the
 13 record. It's 5:15. And I'm going to consult with my
 14 co-counsel and find out how much more time I have in this
 15 deposition.

16 THE VIDEOGRAPHER: The time is 5:14 p.m. We
 17 are off the record.

18 (Break taken from 5:14 p.m. to 5:26 p.m.)

19 THE VIDEOGRAPHER: The time is 5:26 p.m. We
 20 are on the record.

21 **Q. (BY MS. KENNEDY) Did you ever search Gage**
 22 **Lorentz for weapons?**

23 A. I patted him down when I handcuffed him.

24 **Q. Where did you pat him down when you**
 25 **handcuffed him?**

80 (Pages 314 to 317)

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1 A. Just the area accessible to his hands.
 2 **Q. So did you consider a pat-down of the area**
 3 **accessible to his hands a search for weapons?**
 4 MS. LYMAN: Objection. Form and foundation.
 5 A. Yeah.
 6 **Q. (BY MS. KENNEDY) Did you check his back**
 7 **pockets for weapons?**
 8 A. I don't remember checking his back pockets.
 9 **Q. Well, you said you could see the front of**
 10 **his body and you could never see the back of his body.**
 11 **So did you ever clear the back of his body**
 12 **to see whether he had any weapons in his back pockets?**
 13 MS. LYMAN: Objection. Form and foundation.
 14 A. I don't remember checking his back pockets.
 15 **Q. (BY MS. KENNEDY) For weapons?**
 16 A. For weapons.
 17 **Q. Right. Did you -- did you check his front**
 18 **pockets for weapons?**
 19 A. No. Once he was handcuffed, that was not
 20 accessible to his hands.
 21 **Q. Okay. So when you say you patted him down,**
 22 **what area of his body did you pat down?**
 23 A. Okay. Just along the -- the belt line there
 24 when I -- when I -- because the first hand I did out --
 25 out, like this (indicating).

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1 And then I brought it around and brought the
 2 other hand up and secured it and patted that area. And
 3 that would just be consistent with my training.
 4 **Q. So you're testifying to that because it's**
 5 **consistent with your training to check around the --**
 6 **someone's waist for weapons? Is that what you did? You**
 7 **slide your hand around his waist?**
 8 A. Yeah. Just -- if you -- if you can just get
 9 a sense of something, you know, without being intrusive.
 10 Okay. It's possible you could miss something.
 11 **Q. So you didn't find any weapons when you put**
 12 **your hand across Gage's waist?**
 13 A. No, I don't remember that. That I -- no, I
 14 didn't remember finding anything.
 15 **Q. Right. And you know that you didn't find**
 16 **anything. Right?**
 17 A. Correct.
 18 **Q. Okay. Pursuant to National Park Service**
 19 **policy what level of resistance must a suspect display to**
 20 **justify the use of a Taser?**
 21 A. Okay. It could be used when a suspect is
 22 actively resisting.
 23 **Q. Do you have training when describing a**
 24 **suspect's resistance to categorize the resistance by the**
 25 **level of physical resistance such as passive, active, or**

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1 **assaultive?**
 2 MS. LYMAN: Objection. Form and foundation.
 3 A. No. We've never broken it down like that.
 4 **Q. (BY MS. KENNEDY) Okay. Have you ever heard**
 5 **the term passively noncompliant?**
 6 MS. LYMAN: Objection. Foundation.
 7 A. I have heard that term.
 8 **Q. (BY MS. KENNEDY) Who has introduced the**
 9 **term passively noncompliant to you?**
 10 A. I think it's come up at FLETC.
 11 **Q. So in 2005 or later in your training?**
 12 A. 2005 I'm sure that it was discussed.
 13 **Q. What does passive compliance mean?**
 14 A. Passive compliance?
 15 **Q. Right.**
 16 UNIDENTIFIED SPEAKER: Passive
 17 noncompliance.
 18 **Q. (BY MS. KENNEDY) I'm sorry. What did**
 19 **passive not -- what does passive noncompliance mean?**
 20 A. Okay. It just means that they're -- they're
 21 refusing to cooperate.
 22 **Q. So you would agree that passive**
 23 **noncompliance means he did not follow your commands but**
 24 **that he did not physically close distance or physically**
 25 **threaten you.**

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1 MS. LYMAN: Objection. Form and foundation.
 2 A. Okay. We've established that he did not
 3 follow any of my commands. He --
 4 **Q. (BY MS. KENNEDY) Okay. I'm going to stop**
 5 **you there. But he did not follow your command to turn**
 6 **around. Correct?**
 7 A. Correct.
 8 **Q. All right. When he did not follow your**
 9 **command to turn around, did you believe at that point you**
 10 **could use your Taser on him?**
 11 A. No.
 12 **Q. Okay. And at the time that he did not turn**
 13 **around, he did not close distance on you, did he?**
 14 MS. LYMAN: Objection. Form and foundation.
 15 A. No.
 16 **Q. (BY MS. KENNEDY) And at the time that he**
 17 **did not turn around, he did not physically threaten you,**
 18 **did he?**
 19 A. He made the comment about, "No, the other
 20 one."
 21 **Q. Okay. So he did that before you ordered him**
 22 **to turn around. Right?**
 23 A. I had ordered him to turn around I believe
 24 twice and he refused. And I drew the Taser and had it --
 25 had a display. He said, "No, the other one."

81 (Pages 318 to 321)

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1 I asked him, "What?"
 2 He said, "No. The other one. Get real with
 3 me."
 4 **Q. So have you watched the video on one of the**
 5 **breaks during the deposition?**
 6 A. No.
 7 **Q. Okay. So this is from your memory?**
 8 A. Yes.
 9 **Q. Okay. You watched the video of your**
 10 **interaction with Gage Lorentz on Sunday. Correct?**
 11 A. Yes.
 12 **Q. Okay. And that's the last time you saw the**
 13 **video?**
 14 A. Correct.
 15 **Q. Right. So you're testifying based on**
 16 **reviewing the video. Right?**
 17 A. Yeah. I remember -- I remember telling him
 18 to, "Turn around and put your hands behind your back" a
 19 couple of times.
 20 And then I remember when I said, "I've told
 21 you to turn around and put your hands behind your back.
 22 Are you going to do it or not."
 23 "No."
 24 **Q. So -- so after you pulled out your Taser is**
 25 **when he said, "You're going to have to use the other**

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1 one." Right?
 2 A. Yes.
 3 **Q. And those words, you thought, indicated**
 4 **something beyond passive noncompliance?**
 5 MS. LYMAN: Objection. Form and foundation.
 6 A. No. What it indicated to me was that he
 7 intended to escalate the matter.
 8 **Q. (BY MS. KENNEDY) Okay. Why? Why did the**
 9 **words, "You're going to have to use the other one"**
 10 **indicate that he sometime in the future might -- I mean,**
 11 **how did those words indicate to you that he would**
 12 **escalate the matter?**
 13 MS. LYMAN: Objection. Form.
 14 A. I don't think that that's a reasonable
 15 response from somebody who is joking around.
 16 **Q. (BY MS. KENNEDY) Okay. So you didn't ask**
 17 **him, "Hey. What did you mean by that? Why did you say**
 18 **that?"**
 19 A. I did ask him. I asked him to repeat that
 20 for me.
 21 **Q. And did he -- you did? You said, "Repeat**
 22 **that for me"?**
 23 A. I just said, "What?"
 24 **Q. Okay. Did you say -- did you say -- since**
 25 **you didn't know his name, did you say, "What do you mean**

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1 **by I'm going to have to use the other one?"**
 2 MS. LYMAN: Objection. Form.
 3 A. No, I didn't ask him.
 4 **Q. (BY MS. KENNEDY) Did you ask him, "Why did**
 5 **you say that? What a strange thing to say"?**
 6 A. No, I didn't.
 7 MS. LYMAN: Objection. Form.
 8 **Q. (BY MS. KENNEDY) Why not?**
 9 A. To me that's a serious threat. He's telling
 10 me that he wants to escalate this to the need for a
 11 firearm.
 12 **Q. So at that time you didn't ask him to**
 13 **determine whether it was a threat. You agree that you**
 14 **failed to ask him to determine what his words meant.**
 15 MS. LYMAN: Objection. Form.
 16 A. I didn't feel a need to ask him what his
 17 words meant.
 18 **Q. (BY MS. KENNEDY) Why not?**
 19 A. That's -- that's not a conversation I want
 20 to have with somebody who's -- who's not following lawful
 21 commands.
 22 **Q. Why not? Why -- why weren't you trained to**
 23 **use language at that point to de-escalate the situation**
 24 **by saying, "Sir, what do you mean when you say I'm going**
 25 **to have to use the other one? I don't want to use any**

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1 **force here, sir. What's going on"?**
 2 MS. LYMAN: Objection. Form and foundation.
 3 **Q. (BY MS. KENNEDY) Why couldn't you engage**
 4 **him in de-escalation communication at that point?**
 5 A. He -- he's made it clear to me that he's not
 6 willing to cooperate, and I don't think that he's going
 7 to change anything.
 8 **Q. So if you hadn't had used the Taser, he**
 9 **wouldn't have changed anything?**
 10 MS. LYMAN: Objection. Form and foundation.
 11 **Q. (BY MS. KENNEDY) He just would have stood**
 12 **there saying things like, "You're going to have to use**
 13 **the other one"?**
 14 A. No. I think he was prepared to go after the
 15 other one.
 16 **Q. Okay. I'm going to direct your attention to**
 17 **Plaintiffs' Exhibit T that's in your notebook there.**
 18 **(Exhibit T marked.)**
 19 MS. LYMAN: It's the last tab.
 20 **Q. (BY MS. KENNEDY) When you deployed the**
 21 **Taser, how many times did you pull the trigger?**
 22 A. Two, I think.
 23 **Q. Why do you think you only pulled the trigger**
 24 **two times when you deployed the Taser?**
 25 MS. LYMAN: Objection. Form.

82 (Pages 322 to 325)

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1 A. Okay. I believed that I deployed each of
2 the two cartridges unsuccessfully.

3 Q. (BY MS. KENNEDY) Okay. And you pulled the
4 trigger twice. Did you reassess each time you pulled the
5 trigger of the Taser?

6 A. Yes. I noticed that nothing happened.

7 Q. Okay. So you pulled the trigger of the
8 Taser once; you noticed that nothing happened. Gage,
9 even though you had Tased him, just continued to stand
10 there. Correct?

11 A. Yes.

12 MS. LYMAN: Objection. Form and foundation.

13 Q. (BY MS. KENNEDY) At that point did you
14 reassess the threat you were under when after being Tased
15 he just stood there?

16 MS. LYMAN: Objection. Form and foundation.

17 Q. (BY MS. KENNEDY) Did you reassess the
18 threat at that point?

19 A. Yeah.

20 Q. How many seconds passed between the first
21 time and the second time you pulled the Taser?

22 A. Probably five seconds.

23 Q. Oh, okay. And in that five seconds what
24 happened?

25 A. I don't remember anything.

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1 Q. Right. Gage just stood there for the five
2 seconds that you continued to -- so nothing had changed
3 because he'd spoken those words. Is that what you were
4 thinking?

5 MS. LYMAN: Objection. Form and foundation.

6 Q. (BY MS. KENNEDY) And even though you Tased
7 him, he just stood there. Right?

8 A. That's what I remember.

9 Q. Okay. And so, in light of the fact that he
10 didn't escalate the situation, he just stood there, you
11 reassessed. What in your reassessment at that point
12 caused you to pull -- pull the trigger a second time?

13 MS. LYMAN: Objection. Form and foundation.

14 A. That there was no effect from the first
15 Taser cartridge deployment.

16 Q. (BY MS. KENNEDY) Okay. So you saw that
17 Tasing -- pulling the Taser once didn't do anything. And
18 you pulled the Taser trigger again and it didn't do
19 anything again. Correct?

20 A. Yes.

21 Q. And after that, how many times did you pull
22 the trigger on the Taser?

23 A. I don't remember pulling it again.

24 MS. LYMAN: Objection. Form and foundation.

25 Q. (BY MS. KENNEDY) Okay. So it's your

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1 testimony under oath that you don't have any memory of
2 pulling the trigger on the Taser after the first two
3 cartridges came out?

4 A. Correct.

5 Q. Okay. So on the first page of Plaintiffs'
6 Exhibit T there is a still from your body-worn camera.
7 And there is a note from transcript at line 1545: So I
8 kept the Taser out he and he just stared at me, fists
9 clenched, looking at me. And just like I was taught
10 at -- F-l-e-t-c -- how do you say that?

11 A. FLETC.

12 Q. -- FLETC, you know, if you have pre-assault
13 indicators, don't wait around to get assaulted. Take the
14 fight to them.

15 So at that point, this is the last frame
16 before you -- what pre-assaultive behaviors do you see
17 depicted in this still?

18 A. Okay. We had -- we had the verbal comment,
19 okay. And then now we have him standing there. Now he
20 has his hands at his side. Okay. And he had -- I had
21 told him several times to take his hands out of his
22 pockets.

23 Q. Okay. On the second page, 2, it says: So I
24 deployed the Taser. And I did see one barb go into him,
25 but he just stood there. And I went in for a drive-stun,

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1 but no effect.

2 So this still that is under the still of the
3 hand here, is that your two arms as you're pointing the
4 Taser at Gage Lorentz?

5 MS. LYMAN: Objection. Form and foundation.

6 Q. (BY MS. KENNEDY) Depicted on Axon body
7 camera 2, the still at 9 minutes, 17 seconds?

8 A. You're talking about the second photo on the
9 lower one?

10 Q. Yes.

11 A. Okay.

12 Q. I'm sorry. That was incorrectly done. The
13 first photo on top is out of sequence. But the second
14 photo on the bottom, does that depict you pointing the
15 Taser at Gage Lorentz?

16 A. It appears so, but I can't -- I can't see
17 him.

18 Q. You can't see him under your watch?

19 A. Okay. Yeah. I see that there's a person
20 there.

21 Q. And so can you see now, can you deduce, from
22 your knowledge of the incident and your review of the
23 body-worn camera, that you were pointing your Taser at
24 Gage Lorentz?

25 A. Yes.

83 (Pages 326 to 329)

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1 **Exhibit S. What does that depict?**

2 A. It looks like a beer can.

3 **Q. How did that beer can get into your vehicle?**

4 A. I'm sure that I picked it up while I was
5 picking up litter.

6 MS. KENNEDY: All right. Well, I will go
7 off the record and see if there's any brief follow-up
8 questions. If not, do you have any questions?

9 MR. ORTEGA: Give us a second.

10 THE VIDEOGRAPHER: The time is 5:58 p.m. We
11 are off the record.

12 (Break taken from 5:58 p.m. to 6:07 p.m.)

13 THE VIDEOGRAPHER: The time is 6:07 p.m. We
14 are on the record.

15 **Q. (BY MS. KENNEDY) Ranger Mitchell, were you**
16 **confident that you could keep control of your handgun**
17 **when you pulled it from your holster?**

18 MS. LYMAN: Objection. Form and foundation.

19 A. Yes.

20 **Q. (BY MS. KENNEDY) Why were you confident**
21 **that you could keep control of your handgun when you**
22 **pulled it from the holster?**

23 A. Because of my training.

24 **Q. What training made you confident that you**
25 **could keep control of your handgun when you pulled it**

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1 **from the holster?**

2 A. My training with the National Park Service
3 at the Federal Law Enforcement Training Center.

4 **Q. But what training specifically? What**
5 **training told you that you could keep control of your**
6 **handgun when you pulled it from the holster when you were**
7 **involved in a on-the-ground fight with Gage Lorentz?**

8 MS. LYMAN: Objection. Form and foundation.

9 A. My defensive tactics training at the Federal
10 Law Enforcement Training Center.

11 **Q. (BY MS. KENNEDY) What in your defensive**
12 **tactics training at the Federal Law Enforcement Training**
13 **Center made you confident that you could keep control of**
14 **your handgun when you pulled it from the holster?**

15 MS. LYMAN: Objection. Form and foundation.

16 A. The weapons retention training.

17 **Q. (BY MS. KENNEDY) And what about your**
18 **weapons retention training made you confident that you**
19 **could keep control of your handgun when you pulled it**
20 **from the holster?**

21 MS. LYMAN: Objection. Form and foundation.

22 A. The training -- the training was devised so
23 that you could use a firearm with -- with confidence.

24 **Q. (BY MS. KENNEDY) What did they actually**
25 **teach or say that made you think that you could keep**

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1 **control of your handgun when you pulled it out from the**
2 **holster when you were with Gage Lorentz?**

3 MS. LYMAN: Objection. Form and foundation.

4 **Q. (BY MS. KENNEDY) What in your training made**
5 **you do that, that they said to you, "I'm in the middle of**
6 **a on-the-ground fight with a suspect."**

7 **What in the training told you that you could**
8 **keep control of your handgun when you pulled it out from**
9 **the holster?**

10 MS. LYMAN: Objection. Form and foundation.

11 A. I'm not sure that there's any specific
12 training. The training is designed to instill confidence
13 in the officer.

14 **Q. (BY MS. KENNEDY) So you were just confident**
15 **in everything that you did on that day based on your**
16 **training; it just made you confident that you could pull**
17 **out a gun when you were on the ground with a suspect from**
18 **the holster and keep control of it?**

19 MS. LYMAN: Objection. Form and foundation.

20 A. I am -- I am confident that I acted in
21 accordance with my training that day.

22 MS. KENNEDY: Okay. Pass the witness.

23 * * *

24 EXAMINATION

25 BY MS. LYMAN:

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1 **Q. Mr. Mitchell, I just want to ask you a few**
2 **follow-up questions just so that we can make sure that we**
3 **understand everything properly.**

4 **How long did your interaction with Gage last**
5 **in your estimation between the time you exited your**
6 **vehicle to the time you fired that second shot?**

7 A. I would say approximately two and a half to
8 three minutes.

9 **Q. And how much time would you say elapsed**
10 **between when you fired your Taser at Mr. Lorentz and when**
11 **you fired that second shot?**

12 A. 25 to 30 seconds would be my guess.

13 **Q. And how much time would you say elapsed**
14 **between when the drive-stun failed and when you fired**
15 **that second shot?**

16 A. Perhaps 15 seconds.

17 **Q. Is it fair to say, then, that the**
18 **altercation with Mr. Lorentz when it became physical**
19 **lasted just a matter of seconds?**

20 MS. KENNEDY: Objection as to form and
21 foundation.

22 **Q. (BY MS. LYMAN) You can answer.**

23 A. Okay. The question again.

24 **Q. Would it be fair to say that the altercation**
25 **with Mr. Lorentz when it became physical, hand to hand,**

88 (Pages 346 to 349)